

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

PFC/E-3

(Rank)

Headquarters and

Headquarters Company,

United States Army Garrison

(Unit/Command Name)

U.S. Army

(Branch of Service)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

From: Tooman, Joshua J CPT USARMY (US)
Sent: Thursday, August 23, 2012 4:37 PM
To: Fein, Ashden MAJ USARMY MDW (US); David Coombs
Cc: Dodson, Erik H; Hurley, Thomas F MAJ OSD OMC Defense; Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Secure Facility Coordination (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir

Thanks for the quick response. Can we plan on reviewing it on Wednesday afternoon after we finish for the day?

v/r
Josh

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Thursday, August 23, 2012 4:40 PM
To: Tooman, Joshua J CPT USARMY (US); David Coombs
Cc: Dodson, Erik H; 'Hurley, Thomas F MAJ OSD OMC Defense'; Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Secure Facility Coordination (UNCLASSIFIED)

Thanks.

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Friday, August 24, 2012 10:57 PM
To: 'coombs@armycourtmarialdefense.com'
Subject: Emails

David. Could you please add me to your emails to the court. Thanks!

Vr ashden

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Saturday, August 25, 2012 6:32 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Subject: RE: Emails

Ashden,

I did. Did you not receive the email?

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Saturday, August 25, 2012 8:33 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Subject: RE: Discovery

Ashden,

See below.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Saturday, August 25, 2012 10:59 AM
To: 'coombs@armycourtmarialdefense.com'
Subject: Re: Discovery

David. Thanks. For some reason I am not but others on the pros team are. Originally it was because joe accidentally left me off the 17 aug filing and you and the court replied all.

I will check on my work computer later this weekend. If you do send anything else please include joe.

Thank you

Vr ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Sunday, August 26, 2012 10:06 PM
To: 'David Coombs'
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Subject: RE: Discovery

David,

I did not receive the below email with the executable attachment and I assume COL Lind did not either because of the type of attachment. I know we can send them, but apparently we cannot receive them.

Also, I did not receive your first two emails dated 24 Aug 12, 2023 and 2026 hours, because I was not included.

As for the emails, we will have them all ready for the Court, including the 84 emails you tried to send.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Monday, August 27, 2012 7:25 PM
To: 'coombs@armycourtartialdefense.com'
Cc: 'Thomas.Hurley@osd.mil'; Tooman, Joshua J CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Brig Emails

David,

We have the produced emails ready for the defense if you would like them tonight. BATES #: 00511907 - 00514453 - 715 documents, emails and their attachments). These are the emails we referred to in the government's response to the defense motion to compel and for which I referred to in my email on Friday.

If the defense would like the cd tonight please let us know so we can coordinate a member of the defense meeting the paralegals at Fort Meade. Otherwise we will deliver tomorrow morning.

Vr
Ashden

From: Tooman, Joshua J CPT USARMY (US)
Sent: Monday, August 27, 2012 7:25 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Subject: Automatic reply: Brig Emails

I will be out of the office 27 August - 3 September and will have limited access to email. I will return on 4 September. If you need immediate assistance, please contact Ms. Kenya Flakes, 703-805-4383. Thank you.

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Monday, August 27, 2012 7:27 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Thomas.Hurley@osd.mil; Tooman, Joshua J CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Brng Emails

Ashden,

Can you email them to me?

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Monday, August 27, 2012 8:01 PM
To: 'coombs@armycourtartialdefense.com'
Cc: 'Thomas.Hurley@osd.mil'; Tooman, Joshua J CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Re: Brig Emails

David,

The file is too large to email.

Vr
Ashden

From: NWC, Robillard, Socorro A., CIV, NAVWARCOL [socorro.robillard@usnwc.edu]
Sent: Wednesday, August 29, 2012 7:06 AM
To: Clark, Derek D SGT USARMY USAMDW (US)
Cc: Fein, Ashden MAJ USARMY MDW (US); Ford, Arthur D Jr CW2 USARMY (US); David Coombs
Subject: Re: Acknowledgement Receipt 8/22/2012

SGT Clark,

FYI - I'm here until tomorrow but my Division will be closed on Friday, August 31, 2012.

V/r Corrie

Ms. Socorro Robillard, SFPC
Information Security Specialist
Classified Material Control Officer

NATO Sub-registry Control Officer

SIPR address: cmco@nwc.navy.smil.mil <<mailto:cmco@nwc.navy.smil.mil>>

Naval War College

DSN: 841 3381

Comm: (401) 841-3381

E-mail: socorro.robillard@usnwc.edu <<mailto:socorro.robillard@usnwc.edu>>

"THE HUMAN THREAT TO NATIONAL SECURITY:

Did Not Know the Rules - Did Not Understand the Rules - Did Not Follow the Rules"

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>may contain confidential information intended only for the person(s)
>named above. Any misuse or unauthorized disclosure may result in both
>civil and criminal penalties. If you receive this transmission in
>error, please notify the sender at the telephone number or e-mail address above.

From: Clark, Derek D SGT USARMY USAMDW (US)
Sent: Wednesday, August 29, 2012 10:48 AM
To: Robillard, Socorro A CIV (US)
Cc: Fein, Ashden MAJ USARMY MDW (US); Ford, Arthur D Jr CW2 USARMY (US); David Coombs
Subject: RE: Acknowledgement Receipt 8/22/2012

Corrie,

Thank you for the heads-up.

V/R

DEREK D. CLARK

SGT, USA

Paralegal NCO

JFHQ-NCR, MDW

202-685-1975

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, August 29, 2012 5:56 PM
To: 'Thomas.Hurley@osd.mil'
Cc: Overgaard, Angel M CPT USARMY (US)
Subject: Court calendar

Can you please send the word doc. Thanks.

From: Coombs, David E LTC RES USAR USARC [david.coombs@us.army.mil]
Sent: Wednesday, August 29, 2012 6:15 PM
To: Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY
USAMDW (US); Fein, Ashden MAJ USARMY MDW (US)
Cc: Thomas.Hurley@osd.mil; Tooman, Joshua J CPT USARMY (US)
Subject: Case Calendar (UNCLASSIFIED)
Attachments: Def. Proposed Case Calendar for MJ.docx

UNCLASSIFIED
Angel,

Please let me know if you receive this message.

Best,
David
UNCLASSIFIED

From: Overgaard, Angel M CPT USARMY (US)
Sent: Wednesday, August 29, 2012 8:19 PM
To: Coombs, David E LTC USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Fein, Ashden MAJ USARMY MDW (US)
Cc: thomas.hurley@osd.mil; Tooman, Joshua J CPT USARMY (US)
Subject: Re: Case Calendar (UNCLASSIFIED)

Sir,
I got it. Thank you!
Angel

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, August 29, 2012 8:02 PM
To: Fleming, Josephine M CTR USARMY HQDA ITA OPS (US); Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chris) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US); 'jmailiardfleming@verizon.net.'
Subject: RE: troubleshooting email issue.

Josephine,

Here is my test message.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, August 29, 2012 8:03 PM
To: Fleming, Josephine M CTR USARMY HQDA ITA OPS (US); Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chns) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US); 'jmailliardfleming@verizon.net.'
Subject: RE: troubleshooting email issue.

Another Test.

David E. Coombs, Esq.
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, August 29, 2012 8:04 PM
To: Fleming, Josephine M CTR USARMY HQDA ITA OPS (US); Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chris) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US); 'jmailliardfleming@verizon.net.'
Subject: RE: troubleshooting email issue.

Test number 3

David E. Coombs, Esq.
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, August 29, 2012 8:06 PM
To: jmailliardfleming@verizon.net
Cc: Straughn, Jason C CIV DISA CSD (US); Brehm, Christina M (Chris) CTR USARMY HQDA
ITA OPS (US); Overgaard, Angel M CPT USARMY (US); Fein, Ashden MAJ USARMY MDW
(US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Subject: Test Messages

I sent three test messages. Let me know if you need anything else

David E. Coombs, Esq.
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Local: (508) 689-4616

Fax: (508) 689-9282
coombs@armycourtartialdefense.com <<mailto:coombs@armycourtartialdefense.com>>

www.armycourtartialdefense.com <<http://www.armycourtartialdefense.com/>>

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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, August 29, 2012 8:18 PM
To: 'coombs@armycourtmarialdefense.com'; Fleming, Josephine M CTR USARMY HQDA ITA OPS (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chris) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US)
Subject: Re: troubleshooting email issue.

Received.

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, August 29, 2012 8:18 PM
To: 'coombs@armycourtartialdefense.com'; Fleming, Josephine M CTR USARMY HQDA ITA OPS (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chris) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US)
Subject: Re: troubleshooting email issue.

Received.

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, August 29, 2012 8:19 PM
To: 'coombs@armycourt martialdefense.com'; 'jmailliardfleming@verizon.net'
Cc: Straughn, Jason C CIV DISA CSD (US); Brehm, Christina M (Chris) CTR USARMY HQDA
ITA OPS (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT
USARMY USAMDW (US)
Subject: Re: Test Messages

Received all.

From: Fleming, Josephine M CTR USARMY HQDA ITA OPS (US)
Sent: Wednesday, August 29, 2012 8:55 PM
To: 'coombs@armycourtartialdefense.com'; Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Brehm, Christina M (Chris) CTR USARMY HQDA ITA OPS (US); Straughn, Jason C CIV DISA CSD (US)
Subject: Re: troubleshooting email issue.

Got all three as well
Thanks for sending them
Josephine M Fleming
Operations Senior Information Technology Expert US Army Information Technology Agency
Operations
703 545-0294

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Friday, August 31, 2012 4:15 PM
To: David Coombs
Cc: Thomas.Hurley@osd.mil; Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Supp Article 13 Motion
Attachments: Redact Def Supplemental Article 13 Motion updated.docx

David,

Attached is our review of your redactions. We do not object and will notify the Court via email in a moment; however during our review we found additional names or titles that need to be redacted and provided you highlights.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 04, 2012 8:14 AM
To: David Coombs
Subject: Trish Address

David,

Last week you asked me to send you Trish's address, please see below:

2588 Bolinbrook Court
Bryans Road, Maryland 20616

v/r
Ashden

From: NWC, Robillard, Socorro A., CIV, NAVWARCOL [socorro.robillard@usnwc.edu]
Sent: Tuesday, September 04, 2012 10:20 AM
To: David Coombs
Cc: Fein, Ashden MAJ USARMY MDW (US); Fein, Ashden MAJ USARMY MDW (US); Edsall, Harold W CIV (US); Clark, Derek D SGT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Info sent via SIPR

David,

Since you were already informed regarding information sent via SIPR, you were able to read them, some were printed and controlled, and issued to you, I will start cleaning the CMCO SIPR account. We agreed that those messages can be deleted.

CMCO account will still be active as that is the official account for NWC CMCO. However, Harold Edsall, my assistant will be the holder of the CMCO account as this is my last week in the college.

On September 7, 2012, I will be NATO debriefed (as a rule before checking-out), and my account in NWC will cease. I won't be able to access any SIPR information until my check-in to the receiving command.

V/r Corrie

--

Ms. Socorro Robillard, SFPC
Information Security Specialist
Classified Material Control Officer

NATO Sub-registry Control Officer

SIPR address: cmco@nwc.navy.smil.mil <<mailto:cmco@nwc.navy.smil.mil>>

Naval War College

DSN: 841 3381

Comm: (401) 841-3381

E-mail: socorro.robillard@usnwc.edu <<mailto:socorro.robillard@usnwc.edu>>

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Did Not Know the Rules - Did Not Understand the Rules - Did Not Follow the Rules"

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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 04, 2012 4:45 PM
To: David Coombs
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Subject: Today

David,

Thank you for stopping in the office. We are starting to process the offer and owe the Chief of Justice and SJA a brief by the end of the week. Looking at the schedule, the soonest the offer could be acted on is early next week.

v/r
Ashden

From: coombs@armycourtartialdefense.com
Sent: Tuesday, September 04, 2012 5:07 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Subject: Re: Today

Ashden,

Sounds good. Give my regards to CW02 Barnes.

Best,
David

From: Tooman, Joshua J CPT USARMY (US)
Sent: Tuesday, September 04, 2012 6:55 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Subject: Automatic reply: Government Filing

I will be out of the office 4 & 5 September and will return on 6 September. If you need immediate assistance, please contact Ms. Kenya Flakes, 703-805-4383. Thank you.

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 04, 2012 9:17 PM
To: Thomas.Hurley@osd.mil
Cc: David Coombs; Tooman, Joshua J CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US)
Subject: Office Tour

MAJ Hurley,

When is a good time next week for us to come by to look at your office, speak with your IT personnel, and view the secure areas? Later in the week would be better and if possible could you please provide us two different dates and times so we can coordinate with HQDA IT folks. Thanks!

v/r
MAJ Fein

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 04, 2012 10:20 PM
To: NWC, Robillard, Socorro A., CIV, NAVWARCOL; David Coombs
Cc: Edsall, Harold W CIV (US); Clark, Derek D SGT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Info sent via SIPR

Corrie,

Thank you again for all your assistance! We are starting to process the request through the DA G2 to receive approval for Mr. Edsall to use SIPRNET for the defense in this case. We will let Mr. Edsall know when this approval is granted.

v/r
Ashden

From: McLamb, Amber M SGT USARMY MDW (US)
Sent: Wednesday, September 05, 2012 12:55 PM
To: Hurley, Thomas F MAJ OSD OMC Defense
Cc: Whyte, J Hunter CPT USARMY (US); Clark, Derek D SGT USARMY USAMDW (US); von Elten, Alexander S (Alec) CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Jorns, Claire V SGT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US)
Subject: Delivery (UNCLASSIFIED)
Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

MAJ Hurley,

Will you be available sometime tomorrow for a classified delivery?

Thank you.

v/r

SGT McLamb

Classification: UNCLASSIFIED
Caveats: NONE

From: Hurley, Thomas F MAJ OSD OMC Defense [Thomas.Hurley@osd.mil]
Sent: Wednesday, September 05, 2012 3:37 PM
To: McLamb, Amber M SGT USARMY MDW (US)
Cc: Whyte, J Hunter CPT USARMY (US); Clark, Derek D SGT USARMY USAMDW (US); von Elten, Alexander S (Alec) CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Joms, Claire V SGT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US)
Subject: RE: Delivery (UNCLASSIFIED)

SGT McLamb,

Yes, I am available for a classified delivery tomorrow. Morning is better than afternoon, but I can be available anytime.

v/r
MAJ Hurley

From: McLamb, Amber M SGT USARMY MDW (US)
Sent: Wednesday, September 05, 2012 3:40 PM
To: Hurley, Thomas F MAJ OSD OMC Defense
Cc: Fein, Ashden MAJ USARMY MDW (US)
Subject: RE: Delivery (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

Sorry for the confusion. But there will not be a delivery.

Sorry for any inconvenience that this may have caused.

v/r
SGT McLamb

From: Hurley, Thomas F MAJ OSD OMC Defense [Thomas.Hurley@osd.mil]
Sent: Wednesday, September 05, 2012 3:39 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Tooman, Joshua J CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US)
Subject: RE: Office Tour

MAJ Fein

I would be glad to. Late next week is fine. I will have some refined dates NLT Friday.

v/r

MAJ Hurley

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Thursday, September 06, 2012 11:17 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Subject: FW: OTPG

Ashden,

Did you receive the email below?

Best,

David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906

Toll Free: 1-800-588-4156

Local: (508) 689-4616

Fax: (508) 689-9282
coombs@armycourtartialdefense.com

www.armycourtartialdefense.com <<http://www.armycourtartialdefense.com/>>

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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Thursday, September 06, 2012 11:46 AM
To: 'David Coombs'
Subject: RE: OTPG

David,

We did not receive that email. But now have it.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Thursday, September 06, 2012 1:05 PM
To: 'David Coombs'
Subject: test 1

Test 1

From: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Sent: Thursday, September 06, 2012 5:58 PM
To: David Coombs
Cc: Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Tooman, Joshua J CPT USARMY (US); 'Hurley, Thomas F MAJ OSD OMC Defense' pay issue (UNCLASSIFIED)
Subject:

Classification: UNCLASSIFIED
Caveats: NONE

David,

We've been notified by DFAS that PFC BM has been receiving pay since October 2011 in contravention of the DoD Financial Management Regulation (see attached document). If you'll recall, PFC BM was set to ETS in October 2011 and the command involuntarily extended him on active duty. Although we have attempted to delay the process in an effort to determine the most appropriate course of action, DFAS intends to immediately stop pay and begin action to recoup the money paid to BM since last year. As such, we thought it best to notify you as soon as possible. We are consulting various individuals within the finance and military justice communities and will notify you if we gather any more information. Thanks.

CPT Joe Morrow

Trial Counsel

U.S. Army Military District of Washington

Phone: 202-685-1975

NIPR: jodean.morrow.mil@mail.mil

SIPR: jodean.morrow@ifhqncr.northcom.smil.mil

Classification: UNCLASSIFIED
Caveats: NONE

From: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Sent: Thursday, September 06, 2012 6:00 PM
To: David Coombs
Cc: Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Tooman, Joshua J CPT USARMY (US); 'Hurley, Thomas F MAJ OSD OMC Defense'
Subject: RE: pay issue (UNCLASSIFIED)
Attachments: [Untitled_20120906174013.pdf]

Follow Up Flag: Follow up
Flag Status: Completed

Classification: UNCLASSIFIED

Caveats: NONE

Document attached.

CPT Joe Morrow
Trial Counsel
U.S. Army Military District of Washington
Phone: 202-685-1975
NIPR: jodean.morrow.mil@mail.mil
SIPIR: jodean.morrow@ifhqncr.northcom.smil.mil

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Friday, September 07, 2012 1:51 PM
To: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Cc: Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Tooman, Joshua J CPT USARMY (US); 'Hurley, Thomas F MAJ OSD OMC Defense'
Subject: RE: pay issue (UNCLASSIFIED)

Joe,

I received the email. It was placed into my junk email file for some reason. I will discuss this with PFC Manning next week. Please let me know the amount of the debt once DFAS has established it.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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From: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Sent: Friday, September 07, 2012 1:56 PM
To: David Coombs
Cc: Fein, Ashden MAJ USARMY MDW (US); Overgaard, Angel M CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US); Tooman, Joshua J CPT USARMY (US); 'Hurley, Thomas F MAJ OSD OMC Defense'
Subject: RE: pay issue (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Received. Thanks.

CPT Joe Morrow
Trial Counsel
U.S. Army Military District of Washington
Phone: 202-685-1975
NIPR: jodean.morrow.mil@mail.mil
SIPR: jodean.morrow@ifhqncr.northcom.smil.mil

From: Tooman, Joshua J CPT USARMY (US)
Sent: Friday, September 07, 2012 1:57 PM
To: Parra, Jairo A (JP) CW2 USARMY USAMDW (US); Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Hurley, Thomas F MAJ OSD OMC Defense; Kobs, Joe B MAJ USARMY (US)
Subject: RE: Badge for SDC/RDC (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Chief Parra

My SDC, MAJ Joe Kobs, would like to attend the 39a scheduled for October 17 & 18. Please let me know what you need from me to make this possible.
Thanks for your help!

v/r
CPT T

From: Parra, Jairo A (JP) CW2 USARMY USAMDW (US)
Sent: Friday, September 07, 2012 2:01 PM
To: Tooman, Joshua J CPT USARMY (US); Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Hurley, Thomas F MAJ OSD OMC Defense; Kobs, Joe B MAJ USARMY (US)
Subject: RE: Badge for SDC/RDC (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Sir,

Please send me his SSN so I can run a JPAS check his clearance. I will have the badge for him at the hearing and will issue it to him at that time. Please let me know if this helps. Thank you!

v/r,

JP

Jairo A. Parra
CW2, JA
Legal Administrator
JFHQ-NCR, MDW
jairo.a.parra.mil@mail.mil
jairo.parra@us.army.mil
jairo.parra@jfhqncr.northcom.smil.mil
(202) 685-1975 - Direct
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(931) 572-7632 - Cell

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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Monday, September 10, 2012 2:38 PM
To: David Coombs; Thomas.Hurley@osd.mil; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Update

Defense,

Good afternoon. Please see below.

1. OMC Office. We are ready to finalize the coordination to conduct a site survey of the OMC offices for use of SIPRNET and storage of certain classified information. Please provide the proposed dates and times for later this week so we can coordinate with those attending and can work with security offices to ensure everyone has the appropriate clearances.
2. MRE 505(h) notice. As per the agreed upon procedure for providing specificity with the MRE 505(h) notice, we are available to make a copy of the damage assessments available for inspection so that you may mark the information which you intend to use at trial. Please let us know when you would like to meet with your security experts present, and we will have a copy brought to an appropriate government facility for the marking.
3. Diplomat Visit. We were informed last week, that a German parliamentarian requested the German Ambassador's assistance to coordinate a meeting with your client. We do not know who would be visiting or the purpose of the visit. If this German government official was to visit, could you please let us know whether your client would add him/her to his visitor's list. We owe a response to the appropriate authorities.

Thank you.

v/r
Ashden

From: Hurley, Thomas F MAJ OSD OMC Defense [Thomas.Hurley@osd.mil]
Sent: Tuesday, September 11, 2012 9:59 AM
To: Fein, Ashden MAJ USARMY MDW (US); David Coombs; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Update

MAJ Fine

As far as OMC is concerned, can we be more specific? What do you and your people want to see and, as important, what is the Government willing to do? (For instance, would you ever allow for storage over here at a higher-than-secret level?) I am happy to continue this discussion over SIPRNET if that is the appropriate venue.

505(h). We anticipate that we will meet with our experts on 25 September 2012 at some location on Fort Myer for another purpose. Will that meeting (two weeks hence) be timely? Or should we coordinate something sooner?

Thanks.

MAJ Hurley

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 11, 2012 1:52 PM
To: 'Hurley, Thomas F MAJ OSD OMC Defense'; David Coombs; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Update
Attachments: 110910-Memo from DMPO.pdf

David and MAJ Hurley,

OMC. With the assistance of ARCYBER, a site survey team consisting of information assurance, information technology, and physical security will inspect your office, discuss the IT structure of your network that rides on SIPRNET, your email accounts, and the physical space for higher than secret information. As stated on the record, the government is willing to support most of the defense's request, if certain protections and accountability measures are in place, and the purpose of this survey is to understand what exists.

505(h). We can have the material ready for the defense's review on 25 Sep 12 at the Fort Myer TDS office. As for the timeliness- we cannot estimate how much time we will need until we receive the material and send it to the equity holder. We will start processing the request once we receive it.

Client Travel. What day/time would the defense like to meet with PFC Manning before the next session on 17 Oct 12?

Client Pay. Attached is a memorandum we received from the DMPO about your clients pay. We are still working through the details. MTF.

v/r
Ashden

From: Coombs, David E LTC RES USAR USARC [david.coombs@us.army.mil]
Sent: Tuesday, September 11, 2012 5:38 PM
To: Fein, Ashden MAJ USARMY MDW (US); Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Update

Ashden,

I have tried to respond to your previous emails, however, due to the hacking of GoDaddy, none of my emails were sent. Currently, I still cannot send emails from my work account. I will let you know once this situation is corrected.

In regards to some of the outstanding issues:

- 1) OMC - MAJ Hurley will coordinate the resolution of this issue with the Government;
- 2) 505(h) - Again, please coordinate with MAJ Hurley on this issue. I do not believe that there should be much confusion surrounding what we intend to elicit. I would recommend that the Government start the process of coordinating with the equity holder now;
- 3) Client Travel - Please have PFC Manning at the Fort Meade TDS office at 1330 on the 16th.
- 4) Client Pay - I will discuss this issue with PFC Manning. Please send me any documentation from DMPO that indicates the amount overpaid.
- 5) Diplomat Visit - PFC Manning would like to meet with the German parliamentarian as long as his meeting is not monitored. Please inform me whether the visit would be monitored or not.

If I have missed any issues, please let me know by responding to this email address.

Best,
David

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 11, 2012 6:34 PM
To: 'david.coombs.civ@us.army.mil'
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US)
Subject: Test

This is a test email.

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 11, 2012 6:36 PM
To: Coombs, David E LTC RES USAR USARC; Hurley, Thomas F MAJ USARMY (US);
Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT
USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT
USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Update

David,

Good evening, below are more updates.

1. Diplomat Visit. We will find out who is visiting and whether it will be monitored and will let you know ASAP.
2. OTP. I will send in a separate email.
3. Email Usage. Does your US Army provided civilian AKO account (david.coombs.civ@) not work any longer?

Thank you.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Tuesday, September 11, 2012 6:39 PM
To: David Coombs; Coombs, David E LTC RES USAR USARC
Cc: Hurley, Thomas F MAJ OSD OMC Defense; Tooman, Joshua J CPT USARMY (US);
Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT
USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT
USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: OTPG

David,

We discussed the OTP and your below email with the SJA. As of now, the SJA does not support all the terms in your PTA; however he is very amenable to working towards a pretrial agreement that benefits all parties. He asked us to provide more information on a couple of discrete issues so that he can decide on terms he is comfortable recommending to the CG. We intend to get that information to him tomorrow morning. Are you available tomorrow afternoon to discuss our position?

As per your request, the SJA will not take the signed OTP into the CG this week, and he suggests that we wait on the decision for you to speak with the CG until we have worked through the PTA.

v/r
Ashden

From: Coombs, David E LTC RES USAR USARC [david.coombs@us.army.mil]
Sent: Tuesday, September 11, 2012 9:05 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Re: RE: OTPG

Ashden,

I am available to speak tomorrow at any of the following times: (0920 to 1015) or (1430 to 1520) or (1640 to 1730).

Best,
David

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, September 12, 2012 7:26 AM
To: 'Coombs, David E LTC RES USAR USARC'
Cc: David Coombs; Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: RE: OTPG

David,

How about 1640? That should give us enough time to have our final conversation with the SJA.

Thanks.

v/r
Ashden

From: david.coombs@us.army.mil
Sent: Wednesday, September 12, 2012 7:31 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Re: RE: OTPG

Ashden,

1640 is fine.

Best,
David

Sent from my Verizon Wireless BlackBerry

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, September 12, 2012 4:41 PM
To: 'Coombs, David E LTC RES USAR USARC'
Subject: RE: RE: OTPG

David,

What number would you like me to call? I am at 202-685-4572.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, September 12, 2012 4:49 PM
To: 'Coombs, David E LTC RES USAR USARC'; David Coombs
Subject: RE: RE: OTPG

David,

What number would you like me to call? I am at 202-685-4572.

v/r
Ashden

From: Hurley, Thomas F MAJ OSD OMC Defense [Thomas.Hurley@osd.mil]
Sent: Wednesday, September 12, 2012 5:10 PM
To: Fein, Ashden MAJ USARMY MDW (US); David Coombs; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Update

All

OMC. I am working the site inspection of OMC issue now. Our security people are coordinating with OMC security people. I fear that this will take a while. Will pass along updates as I get them.

505(h). Acknowledged.

v/r
MAJ Hurley

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, September 12, 2012 9:58 PM
To: 'Hurley, Thomas F MAJ OSD OMC Defense'; David Coombs; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Eiten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Update

Thank you!

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Thursday, September 13, 2012 8:33 PM
To: David Coombs
Cc: 'Hurley, Thomas F MAJ OSD OMC Defense'; Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Discovery Update
Attachments: 120913-Government Response to Defense Discovery Request dated 19 July 2012.pdf; 120913-Government Response to Defense Discovery Request dated 9 July 2012.pdf; Enclosure 1 to Government Response to Defense Discovery Request dated 9 July 2012.pdf; Enclosure 2 to Government Response to Defense Discovery Request dated 9 July 2012.pdf

David,

Attached are the following two responses for defense discovery requests:

1. CIA Information, dated 19 July 2012.
2. Quantico Video, dated 9 July 2012.

Absent the defense request for unclassified damage assessments and the ongoing Giglio disclosures, we are not tracking any other defense discovery requests. Please let us know if this is incorrect. As for the unclassified damage assessments, we will provide the defense with a roll-up next week, along with a production of any material we received.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Thursday, September 13, 2012 8:34 PM
To: David Coombs
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Discovery Update
Attachments: 120913-Government Response to Defense Discovery Request dated 19 July 2012.pdf;
120913-Government Response to Defense Discovery Request dated 9 July 2012.pdf;
Enclosure 1 to Government Response to Defense Discovery Request dated 9 July 2012.pdf;
Enclosure 2 to Government Response to Defense Discovery Request dated 9 July 2012.pdf

David,

Attached are the following two responses for defense discovery requests:

1. CIA Information, dated 19 July 2012.
2. Quantico Video, dated 9 July 2012.

Absent the defense request for unclassified damage assessments and the ongoing Giglio disclosures, we are not tracking any other defense discovery requests. Please let us know if this is incorrect. As for the unclassified damage assessments, we will provide the defense with a roll-up next week, along with a production of any material we received.

v/r
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Friday, September 14, 2012 8:40 PM
To: David Coombs
Cc: Hurley, Thomas F MAJ OSD OMC Defense; Tooman, Joshua J CPT USARMY (US); Hall, Cassius N CIV (US); Ganiel, Charles J CIV (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Boardman, Gerald W CIV (US)
Subject: Discovery

David,

We sent to you via FEDEX the following unclassified information: DHS discovery and a declassified DOE assessment (BATES #: 00514454-00514497 and 00514499-00514500). Unfortunately, I do not have the tracking number and will be able to provide it Monday, although the delivery is scheduled for tomorrow. We will deliver the other disc to MAJ Hurley on Monday.

On Monday, we will send to the NWC and deliver to MAJ Hurley classified discovery from DHS and the classified information the Court approved under MRE 505(g)(2) for DIA and CIA (BATES #: 00514498-00515842).

Finally, we have other classified material from DIA and ODNI, available for inspection in a SCIF, based on its classification (BATES #: 00514501-00514898). Please let us know whether you rather us deliver the information to Cassius at INSCOM HQ.

v/r
Ashden

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Saturday, September 15, 2012 10:13 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Hall, Cassius N CIV (US); Ganiel, Charles J CIV (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Boardman, Gerald W CIV (US)
Subject: RE: Discovery

Ashden,

1. DHS/DOE: I will let you know once I receive the discovery.
2. Classified DHS, DIA and CIA. I will coordinate with Corrie to view this information next week.
3. DIA/ODNI - Please deliver a copy to Cassius. Also, I thought ODNI did not have anything related to our case. Is the information the ONCIX information or is this something else?

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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coombs@armycourtartialdefense.com
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Saturday, September 15, 2012 10:24 AM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia Ann (Trisha Williams-Butler) CIV USARMY USAMDW (US); Jefferson, Dashawn MSG USARMY (US); Moore, Katrina R SFC USARMY (US)
Subject: RE: Government Filing

Ashden,

Yesterday the Government stated that "the prosecution made available to the defense for inspection all Department documents responsive to the above Court Order, or otherwise discoverable, for which redactions under RCM 701(g)(2) or MRE 505(g)(2) are not sought (i.e., approximately 6500 pages)." Is this true? If so, where are these documents?

Later you state "[f]or all remaining documents for which redactions are not sought, the prosecution will deliver these documents to the defense by 21 September 2012." What documents are you referring to? Is it the 6500 pages or something else?

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Saturday, September 15, 2012 11:40 AM
To: 'coombs@armycourtmarialdefense.com'
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia Ann (Trisha Williams-Butler) CIV USARMY USAMDW (US); Jefferson, Dashawn MSG USARMY (US); Moore, Katrina R SFC USARMY (US)
Subject: Re: Government Filing

David,

I apologize for the confusion. The department of state document for which redactions are not sought are available for the defense to inspect at our office as of yesterday. We also will deliver digital copies of these documents to the defense in classified discovery early next week. Should the defense want to inspect these documents before then, please coordinate with your security experts (based on their classification level) and let us know when you want to inspect. There are approximately 6500 pages.

There are also approximately 8 documents ready for the defense to review at the department of state in addition to the 6500 we will produce in classified discovery. Based on the classification of those 8 documents, the documents are available to review at state.

All remaining department of state documents have been submitted to the court under mre 505 and rcm 701.

Vr
Ashden

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Saturday, September 15, 2012 11:46 AM
To: 'coombs@armycourtartialdefense.com'
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Hall, Cassius N CIV (US); Ganiel, Charles J CIV (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Boardman, Gerald W CIV (US)
Subject: Re: Discovery

David,

Please remember Corrie is gone and her replacement is the POC. I will send all tracking numbers on monday so you know when they should be available.

For ODNI docs, these are the results of our Brady search, above and beyond the litigation over the specifically requested ncix damage assessment.

We will coordinate with Cassius for delivery.

Vr
Ashden

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Saturday, September 15, 2012 12:48 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia Ann (Trisha Williams-Butler) CIV USARMY USAMDW (US); Jefferson, Dashawn MSG USARMY (US); Moore, Katrina R SFC USARMY (US)
Subject: RE: Government Filing

Ashden,

I am still a little confused as to what I will be receiving on the 21st. Also, is it possible for a member of the Defense to pick up the 6500 pages of discovery on Monday?

Best,
David

David E. Coombs, Esq.
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From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Saturday, September 15, 2012 1:19 PM
To: 'coombs@armycourtartialdefense.com'
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia Ann (Trisha Williams-Butler) CIV USARMY USAMDW (US); Jefferson, Dashawn MSG USARMY (US); Moore, Katrina R SFC USARMY (US)
Subject: Re: Government Filing

David,

We received one copy of the DOS documents for the government and defense. This copy is available for inspection by any member of the defense team. In an effort to provide actual copies to the defense rather than having the defense come to our office to inspect over the course of this case, the Department authorized us to produce them with Bates numbers the same way we have produced all other information in discovery. Once we process this set of docs we will get them out the door to you at the NWC and to Hurley's office ASAP. In the mean time, they are available for inspection. We wrote the NLT date of 21 Sep because it might take us a week to digitally process them, but I think we can get it sooner and will try- its our top priority next week when our paralegals return on Monday.

Vr
Ashden

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Monday, September 17, 2012 4:39 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Hurley, Thomas F MAJ USARMY (US)
Subject: OTPG

Ashden,

I have discussed the SJA's OTPG terms with my client. As expected, he is not willing to accept any OTPG that involves a cap higher than 15 years. As such, can you inform me when the SJA intends on taking the OTPG to the CA?
Prior to that date, the Defense would appreciate the opportunity to speak with the CA concerning the OTPG.

Best,
David

David E. Coombs, Esq.
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11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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From: Jorns, Claire V SGT USARMY (US)
Sent: Tuesday, September 18, 2012 9:45 AM
To: Hurley, Thomas F MAJ USARMY (US)
Cc: Fein, Ashden MAJ USARMY MDW (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Classified Delivery (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

Are you available to accept a classified delivery today? Thank you!

V/R

Claire Jorns

SGT, USA

Paralegal NCO

MDW OSJA

Classification: UNCLASSIFIED
Caveats: NONE

From: Hurley, Thomas F MAJ OSD OMC Defense [Thomas.Hurley@osd.mil]
Sent: Tuesday, September 18, 2012 2:22 PM
To: Fein, Ashden MAJ USARMY MDW (US); David Coombs; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: OMC Office Tour

All

Let's settle on a date for the tour. How about either Monday of next week (24 September) or Friday of next week (28 September)?

Thanks.

MAJ Hurley

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Tuesday, September 18, 2012 9:21 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Discovery

Ashden,

Thank you. I understand that the DOS information is available for inspection, however, when will the Government be sending this to me at the NWC and to MAJ Hurley?

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, September 19, 2012 6:17 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: OTPG

Ashden,

I would like to speak to COL Bradley. Can you please ask him when would be a convenient time? Thank you.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
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From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Wednesday, September 19, 2012 8:27 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDOW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: OTPG

Thank you. Have you received attachments 41 through 70?

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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From: Jorns, Claire V SGT USARMY (US)
Sent: Thursday, September 20, 2012 3:22 PM
To: Hurley, Thomas F MAJ USARMY (US); Hurley, Thomas F MAJ USARMY (US)
Cc: Ford, Arthur D Jr CW2 USARMY (US); Fein, Ashden MAJ USARMY MDW (US)
Subject: Classified Delivery (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

Will you be available to accept a classified delivery tomorrow? Thank you.

V/R

Claire Jorns

SGT, USA

Paralegal NCO

MDW OSJA

Classification: UNCLASSIFIED
Caveats: NONE

From: David Coombs [coombs@armycourtartialdefense.com]
Sent: Thursday, September 20, 2012 4:22 PM
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: OTPG

Ashden,

I was out of the office most of the day. I am available now or tomorrow between 1300 and 1500. I do not anticipate the conversation being an lengthy one.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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UNITED STATES

v

MANNING, Bradley E., PFC
U.S. Army, [REDACTED]
Headquarters and Headquarters Company,
U.S. Army Garrison, Joint Base Myer-
Henderson Hall, Fort Myer, VA 22211


**RULING: GOVERNMENT
MOTION FOR PROTECTIVE
ORDER – CID REGULATION**

DATED: 12 October 2012

On 10 October 2012, the Government advised the Court that the Commanding General, U.S. Army Criminal Investigation Command (USACIDC) invoked a privilege against disclosure of Chapter 8-2 of CID Regulation (CIDR) 195-1 to the Defense. The Government further moved this Court to grant a protective order that orders release of CIDR 195-1, Chapter 8-2 to the defense and establishes protections regarding the distribution and reproduction. The Defense does not object.

The Government motion for protective order is **GRANTED**.

Ordered this 12nd day of October 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

APPELLATE EXHIBIT 340
PAGE REFERENCED: _____
PAGE _____ OF _____ PAGES

IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Protective Order:
CIDR 195-1, Chapter 8-2

Dated: 12 October 2012

The Government has established the relevance of Chapter 8-2 of CIDR 195-1. The Court issues this protective order to control the distribution and reproduction of any portion of CIDR 195-1, whether exchanged via discovery or not, in U.S. v. Manning.

IT IS ORDERED:

1. Copying and distributing any portion of CIDR 195-1 is limited to one copy only, each, to the Trial Counsel (MAJ Ashden Fein) and Defense Counsel (Mr. David Coombs), which copies, or an attestation (under oath) evincing the document's destruction, must be returned to the local USACIDC office within forty-eight (48) hours after the conclusion of the trial (in the court of first instance) of this matter, which is defined as the date the Defense remits to the United States its RCM 1105/1106 submissions.
2. Chapter 8-2 of CIDR 195-1 shall be produced to the Defense subject to the restrictions contained in this order and the restrictions outlined in the Distribution Section of CIDR 195-1;
3. Any request for further portions of CIDR 195-1 will require a separate request; separate motion for protective order and protective order;
4. A protective mask or watermark, as described in CIDR 195-1 shall be placed on any documents governed by this protective order whether the documents are exchanged electronically (PDF) or in hardcopy (paper) format.
5. Should any portion of CIDR 195-1 be introduced into the record of trial as part of an exhibit in U.S. v. Manning, the Government may move the Court to seal that portion of the exhibit.

ORDERED, this 12th day of October 2012.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

APPELLATE EXHIBIT 341
PAGE REFERENCE
PAGE ___ OF ___ PAGES

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army,)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE NOTICE OF PLEA,
FORUM, AND EXPECTED
MOTIONS**

DATED: 15 October 2012

1. In accordance with the Rules of Practice before Army Courts-Martial, PFC Manning, by and through his attorney, hereby serves notice to the Government and Court of anticipated plea, requested forum, and expected motions. By way of this plea, the Defense waives any objection under *United States v. Borunda*, 67 M.J. 607 (A.F.Ct.Crim.App. 2009) regarding whether Clause 1 and 2 of Article 134 is a lesser included offense of Specifications 2,3,5,7,9,10,11, and 15 of Charge II. The Defense also waives any objection that Article 121, UCMJ, preempts Clause 1 and 2 of Article 134 as a lesser included offense of Specifications 4,6,8,12, and 16.

A. Plea:

To the Specification of Charge I and to Charge I: Not Guilty.

To Specification 1 of Charge II: Guilty, except the words and figures 1 November 2009, 27 May 2010. Substituting therefore the words and figures 3 February 2010, 4 May 2010. Of the excepted words and figures, Not Guilty. Of the substituted words and figures, Guilty.

To Specification 2 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 3 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 4 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 641, but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

APPELLATE EXHIBIT 342
PAGE REFERENCED: _____
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To Specification 5 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 6 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 641, but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 7 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 8 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 641, but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 9 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 10 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces.

To Specification 11 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 12 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 641, but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 13 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 1030(a)(1), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 14 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 1030(a)(1), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 15 of Charge II: Not Guilty of Crimes and Offenses Not Capital, Violations of Federal Law, 18 U.S. Code Section 793(e), but Guilty of Disorders and Neglects to the Prejudice of Good Order and Discipline or of a Nature to Bring Discredit Upon the Armed Forces under Clause 1 and 2 of Article 134.

To Specification 16 of Charge II: Not Guilty.

To Charge II: Guilty.

To Specification 1 of Charge III: Not Guilty.

To Specification 2 of Charge III: Not Guilty.

To Specification 3 of Charge III: Not Guilty.

To Specification 4 of Charge III: Not Guilty.

To Specification 5 of Charge III: Guilty, except the word and figures 1 November 2009. Substituting therefore the word and figures 5 January 2010. Of the excepted word and figures, Not Guilty. Of the substituted word and figures, Guilty.

To Charge III: Guilty.

B. Forum:

Trial by Military Judge Alone.

C. Expected Motions:

Motion to Dismiss: Speedy Trial under Article 10 and R.C.M. 707;

Motion to Dismiss: Unlawful Pretrial Punishment under Article 13; and

Motion to Dismiss: Unreasonable Multiplication of Charges for Findings and Sentencing (after announcement of Findings).

2. The Defense will provide draft specifications to the Court for each of the lesser included offenses to which PFC Manning will be pleading guilty within Charge II. The lesser included offenses' draft specifications will be provided to the Court in a separate memorandum prior to the Court's acceptance of PFC Manning's pleas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Coombs', with a stylized flourish at the end.

DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES OF AMERICA)

v.)

Updated Prosecution Witness List

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

15 October 2012

The prosecution may call the below witnesses to testify on the merits at trial and/or during the presentencing phase¹ of the above-captioned court-martial. After each witness name is a brief description of the general substance of witness testimony, including whether the prosecution currently intends to elicit classified information during their testimony.

1. CDR Youssef Aboul-Enein, Defense Intelligence Agency, Bolling AFB, DC, 20032, (202) 231-7737. He will testify about enemies of the United States, including classified information.
2. SFC Paul Adkins, 10th Mountain Division (LI), Fort Drum, NY, 13602, (315) 523-5790. He will testify about the accused's training, activities, and duties.
3. Ms. Sara Loving (Alicie), 6161A Main Street, Fort Drum, NY, 13603, (315) 454-3185. She will testify concerning the accused's execution of an SCI NDA.
4. Ms. Lisa Alleman, Office of Personnel Management, Boyers, PA, 16016, (724) 794-5612 ext 7000. She will testify as to the authenticity of the OPM records.
5. Mr. Maxwell Allen, Central Intelligence Agency, McLean, VA, 22101, POC: Ms. Jennifer M., (571) 280-3193. He will testify as to the authenticity of the OSC logs.
6. SPC Mary Amiatu, Camp Arifjan, Kuwait, APO AE, 09306, DSN: (318) 430-6314. She will testify as to the authenticity of the JAMMS records.
7. SPC Kyra (Marshall) Amos, Bravo Company, 57th Signal Battalion, Ft. Hood, TX, 76544 (deployed to Afghanistan), (254) 287-6918. She will testify concerning her use of the supply room computer.
8. SFC Jose Anica, Headquarters and Headquarters Company (HHC), National Ground Intelligence Center (NGIC), Charlottesville, VA, 22911, (434) 980-7453. He will testify about the accused's intelligence systems training and the accused's activities at 2/10, including potential classified information.
9. Mr. Peter Artale, 902d MI Group, Fort Meade, MD, 20755, (301) 677-5107. He will testify as to the authenticity of the ACIC logs, including classified information.

¹ As of the date of this filing, persons identified with an asterisk ("*") are witnesses only for purposes of the presentencing phase.

APPELLATE EXHIBIT 343
PAGE REFERENCED:
PAGE ____ OF ____ PAGES

10. SPC Eric Baker, 10200 N. Riva Ridge Loop, Ft. Drum, NY, 13602, (910) 354-4552. He will testify about the accused's activity in his CHU and the accused's activities at 2/10.
11. SPC Kimberly Bales, Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, (315) 774-2959. She will testify about her deployment with the accused and the duties of a 35F, including classified information.
12. WO1 Kyle Balonek, Headquarters and Headquarters Company (HHC), Headquarters and Headquarters Battalion (HHBN), 10th Mountain Division (LI), Fort Drum, NY, 13602, (315) 775-7203. He will testify about the requirements of being a 35F, the accused's duties and work product, including classified information.
13. CW4 Anthony Barnett, US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, (520) 538-6428. He will testify as to the authenticity of the AIT documents.
14. Mr. Joseph Benthall, Watertown, NY, 13601, (315) 405-8856. He will testify about the requirements for access to government systems at 10th Mountain Division.
15. SA Troy Bettencourt, U.S. Department of Treasury, Washington, DC, 20220, (571) 721-8969. He will testify about the IA training the accused received, authentication of multiple pieces of evidence, and the information that the accused leaked to WikiLeaks, including classified information.
16. SSG Peter Bigelow, US Army NATO, Allied Forces Command South, Naples, Italy, FPO AE, 09620, (039) 348-094-0656. He will testify about the accused's duties in the supply room and the accused's access to computer systems.
17. Mr. Wyatt Bora, Air Force Research Laboratory, Rome, NY, 13440, (315) 330-4944. He will testify about the CIDNE database, its value, and how it appeared at a particular time, including classified information.
18. SA John Bowen, 3rd MP Group (CID), Ft. Eustis, VA, 23604, (352) 516-1470. He is a chain of custody witness.
19. Mr. Steve Buchanan, Intelink, Fort Meade, MD, 20755, (410) 854-9500. He will testify as to the authenticity of the Intelink logs, including classified information.
20. * BG (Ret.) Robert Carr, Defense Intelligence Agency, Bolling AFB, DC, 20032, (202) 231-3000. He will testify at sentencing about the impact on the Department of Defense, including classified information.
21. Mr. Sean Chamberlin, 902d MI Group, Fort Meade, MD 20755, (301) 677-3425. He will testify about how the ACIC logs, including classified information.

22. CPT Thomas Cherepko, NATO Force Command, Madrid, Spain, 28223, (412) 387-3090. He will testify about the 2/10 Mountain share drive and its contents, as well as the requirements to access it.
23. * Col Julian Chesnutt, Defense Intelligence Agency, Bolling AFB, DC 20032, (704) 747-4189. He will testify at sentencing about the impact on a specific AOR within the Department of Defense, including classified information.
24. SA Charles Clapper, Arizona Branch Office - Computer Crime Investigative Unit, Fort Huachuca, AZ, 85613, (520) 538-0182. He is a chain of custody witness.
25. Dr. Michael Collins, RedJack, Silver Spring, MD, 20910, (301) 335-6352. He will testify about the Centaur logs, including potential classified information.
26. Mr. Domingo U. Conlu, US Army Human Resources Command, Fort Knox, KY, 40122, (502) 613-9990. He will testify as to the authenticity of the accused's OMPF.
27. SGT Lorena Cooley, Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, (770) 853-3954. She will testify about the accused's work product and the accused's activities within 2/10, including classified information.
28. * Ms. Elizabeth Dibble, Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. She will testify at sentencing about the impact to Near Eastern Affairs, including classified information.
29. * Mr. Vann Van Diepen, Acting Assistant Secretary, Bureau of International Security and Nonproliferation, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify at sentencing about the impact to International Security, including classified information.
30. * RADM Kevin Donegan, Director, Naval Warfare Integration, Pentagon, Washington, DC, POC: LT Will Chapman, (703) 614-2301. He will testify at sentencing about the impact on operations within the USCENCOM AOR, including classified information.
31. Mr. Jim Downey, Defense Information Systems Agency, Fort Meade, MD, 20755, (571) 205-2052. He will testify about Centaur logs, including potentially classified information.
32. SA Jeremy Drews, 10740 Pearl Sands Dr, El Paso, TX 79924, (915) 568-1700. He is a chain of custody witness.
33. SA Antonio Edwards, Homeland Security Investigations, National Security Unit, Atlanta, GA 30301, (404) 346-2846. He is a chain of custody witness.

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34. SA Kirk Ellis, Rock Island Fraud Resident Agency, Major Procurement Fraud Unit, Moline, IL, 61265, (309) 757-5812. He is a chain of custody witness.
35. Mr. John Feeley, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from and sent to the Western Hemisphere on the merits and the impact to Western Hemisphere Affairs on sentencing, including classified information.
36. Mr. Ryan Fidler, Nacon Consulting, LLC, 418 Third ST, Annapolis, MD, 21403, (410) 295-5070. He will testify as to the authenticity of the accused's IA training.
37. CPT Matthew Freeburg, Fort Sill, OK, 73503, (915) 588-8102. He will testify about the accused's activities while deployed.
38. CPT Casey Fulton (formerly Martin), 2nd Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, (404) 769-8984. She will testify about the the accused's training, duties, and work product, including classified information.
39. Mr. James Fung, Brookhaven National Laboratory, Upton, NY, 11973, (631) 344-8403. He is a chain of custody witness.
40. Ms. Shelia Glenn, Fort Meade, MD, 20755, (301) 677-3284. She will testify about a Department of the Army classified charged document, including classified information.
41. Mr. Mike Goldman, Brookhaven National Laboratory, Upton, NY, 11973, (631) 344-3324. He is a chain of custody witness.
42. SA Toni Graham, Hawaii CID Office, 1314 Lyman Road, Building 3026, Schofield Barracks, HI, 96857, (808) 655-1776. She will testify about the law enforcement investigation in Iraq.
43. Mr. Jacob Grant, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-6068. He will testify about the USCENTCOM server logs, including potentially classified information.
44. AMB Kenneth Gross, Deputy Director, Office of Career Development and Assignments, Bureau of Human Resources, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify at sentencing about impact to South and Central Asian Affairs, including classified information.
45. CW3 Hondo Hack, Joint Multinational Readiness Center, Hohenfels Military Community, Germany, APO AE, 09173, DSN: (314) 520-5380. He will testify about the accused's work product, including classified information.
46. Mr. Bert Haggett, HQDA G-2, Washington, DC, 20310, (703) 695-2654. He will testify about information security.

47. VADM Robert Harward, USCENTCOM, MacDill AFB, FL, 33621, USCENTCOM OSJA, (813) 529-0302. He will testify as an original classification authority (OCA) that charged information was properly classified, including classified information.
48. Mr. Ben Henwood, Senior System Administrator, USCENTCOM Intelligent Software Solutions, Inc., Tampa, FL, 33609, (813) 827-0436. He will testify about the CIDNE database, including potentially classified information.
49. Mr. John Hodges, Senior Technician, USCENTCOM Intelligent Software Solutions, Inc., Tampa, FL, 33609, (813) 827-0436. He will testify about the CIDNE database, including potentially classified information.
50. Mr. Patrick Hoeffel, Intelligent Software Solutions, Inc., 2001 Jefferson Davis Hwy, Suite 909, Arlington, VA, 22202, (719) 457-0232. He will testify about the CIDNE database, including potentially classified information.
51. Ms. Mary Horvath, Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. She will testify about her forensic analysis of digital media, not belonging to the accused, including classified information.
52. Mr. Matthew Hosburgh, Westminster, CO 80021, (720) 232-6538. He will testify about the C3 document.
53. LT (US Navy) Thomas Hoskins, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-5321. He will testify about the content of charged documents containing J5 information, including classified information.
54. Ms. Tina Huffman, 439 West Ten Eyck Street, Watertown, NY, 13601, (315) 772-7163. She will testify about the authenticity of the accused's SCI Indoctrination packet.
55. Mr. George Huley, HQDA G-3/5/7, Army Pentagon, Washington, DC, 20310, (703) 614-6558. He will testify about OPSEC.
56. Ms. Susy Hwang, Forensic Examiner, Federal Bureau of Investigation, Washington, DC 20535, (202) 278-2000. She is a chain of custody witness.
57. Ms. Elisa K. (Rubin) Ivory, S2 OIC, 305th Military Intelligence Battalion, US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, (520) 533-6590. She will testify concerning requirements of being a 35F.
58. Mr. Albert J. Janek, Director, Office of Continuity, Department of State, Washington DC, 20520, Duty Station: U.S. Embassy, Kabul, Afghanistan, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the authenticity and chain of custody of the DoS server logs.
59. Mr. Glen Johnson, Deputy Chief Information Officer for Operations, Messaging Systems Office, Bureau of Information Resource Management, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth

O'Connor, (202) 647-7246. He will testify about NCD, including potentially classified information.

60. Mr. Mark Johnson, Digital Forensics and Research Branch, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 451-9326. He will testify about his forensic analysis of the accused's digital media, including classified information.
61. * AMB Patrick F. Kennedy, Under Secretary for Management, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify on sentencing about the impact to the Department of State, including classified information.
62. SA Kenneth King, Washington Metro Resident Agency, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 305-4462. He is a chain of custody witness.
63. * Mr. John Kirchhofer, Chief of Enterprise Strategies, Office of Counterintelligence (CI) Human Intelligence (HUMINT) Enterprise Management, Defense Counterintelligence and Human Intelligence Center, Defense Intelligence Agency, Bolling AFB, DC, 20032, (202) 231-3000. He will testify in sentencing about the impact to the Department of Defense, including classified information.
64. * AMB Michael Kozak, Senior Adviser, Bureau of Democracy, Rights and Labor, Department of State, Washington DC 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify on sentencing about the impact on individuals classified as persons at risk by the Department of State, including classified information. This testimony will not include PII of any specific individual.
65. Mr. Adrian Lamo, Carmichael, CA 95608, (916) 944-1024. He will testify regarding his digital chat with the accused. The United States does not intend to elicit any classified information contained within the digital chat log.
66. CW5 Jon Larue, DAMO-AV, Pentagon, DC, 20310, (703) 693-3579. He will testify about the content of the Apache Video.
67. Mr. Danny J. Lewis, Defense Intelligence Agency, Bolling AFB, DC, 20032, (202) 231-3000. He will testify about counterintelligence and the value of information, including classified information.
68. CPT Steven Lim, HQ, 1st Army Division-East, Fort Meade, MD, 20755, (301) 833-8461. He will testify about the 2/10 Mountain share drive and its contents, the accused's training and duties, including potentially classified information.
69. SA Jennie Lisciandri, Okinawa CID Office, Building 220 Unit 35139, Okinawa, Japan APO AP 96376-5139, DSN: (315) 644-4188. She will testify about the investigation in Iraq.

70. Mr. Michael Longwell, Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness.
71. * Mr. Randall MacRobbie, Defense Intelligence Agency, Bolling AFB, DC, 20032, (202) 231-3000. He will testify at sentencing about a specific category of impact on the United States Government and the Department of Defense, including classified information.
72. SGT Chad Madaras, Bravo Company (B Co), 2nd Brigade Special Troops Battalion (2 BSTB), 2nd Brigade Combat Team (2 BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, (315) 404-6275. He will testify about the 35F training, 2/10 pre-deployment training, and the use of his SIPRNET computers while deployed, including potentially classified information.
73. Mr. Brian Madrid, 21057 W. Western Dr. Buckeye, AZ, 85326, (602) 390-1285. He will testify about the accused's training at AIT.
74. Ms. Tamara Mairena, Headquarters, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 305-4478. She is a chain of custody witness.
75. SA Mark Mander, Washington Metro Resident Agency, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 305-4463. He will testify about Wikileaks operations, the investigation of the accused, and certain enemies of the United States being in possession of information, including classified information.
76. SGT Alejandro Marin, 800th MP Brigade, Uniondale, NY, 11553, (516) 946-7366. He will testify about the accused's training at AIT.
77. Mr. Randy Marks, Intelink, Fort Meade, MD, 20755, (410) 654-9500. He will testify about how Intelink logs, including potentially classified information.
78. *Gen. James N. Mattis, Commander, USCENTCOM, MacDill AFB, FL, 33621, USCENTCOM OSJA, (813) 529-0302. He will testify at sentencing about the impact on USCENTCOM, including classified information.
79. * Mr. James McCarl, Chief, Mission Integration Division, Joint IED Defeat Organization (JIEDDO), Army Pentagon, Washington DC, 20310, (877) 251-3337. He will testify on sentencing about impact concerning IEDs, including classified information.
80. Mr. Vince McCarron, HQDA G-2, Washington, DC, 20310, (703) 614-6440. He will testify about the DCGS-A system, including potentially classified information.
81. Mr. Brian Mcfall, USCENTCOM, MacDill AFB, FL, 33621, (716) 830-8545. He will testify about the training received at AIT.

82. * MajGen Kenneth McKenzie, USMC HQ Staff, Washington DC, POC: Maj Arum Han, (703) 692-4368. He will testify at sentencing about the impact on strategic planning within the USCENTCOM AOR, including classified information.
83. Mr. James McManus, Brookhaven National Laboratory, Upton, NY, 11973, (631) 344-4107. He is a chain of custody witness.
84. Ms. Felice McPhaul, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. She is a chain of custody witness.
85. COL David Miller, BDE Modernization Command, Ft. Bliss, TX, (915) 569-7205. He will testify about the accused's misconduct and multiple investigations.
86. Mr. Jason Milliman, 262 Jefferson Drive West, Palmyra, VA, 22963, (434) 995-4441. He will testify about the accused's access to DCGS-A, including potentially classified information.
87. Mr. James Moore, Deputy Assistant Secretary, Bureau of South and Central Asian Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from South and Central Asia on the merits, including classified information.
88. Mr. Ken Moser, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-0302. He will testify about the information posted to the USCENTCOM OSJA SIPRNET website, including potentially classified information.
89. Mr. Jeffery Motes, JTF-GTMO, Guantanamo Bay, Cuba, 011-5399-9805. He will testify about the JTF-GTMO database and the contents of compromised information, including classified information.
90. Mr. Troy Moul, US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, (520) 538-6767. He will testify about instructing the accused at AIT.
91. * Mr. Kin Moy, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify on sentencing about the impact on East Asian and Pacific Affairs, including classified information.
92. Mr. Jonathan Muldoon, DISA, Pensacola, FL, 32508, (850) 452-7797. He will testify about the authenticity of the Centaur logs.
93. Mr. Gerald Mundy, Information Systems Security Officer, Bureau of Intelligence and Research, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the authenticity and chain of custody of the DoS firewall logs, including potentially classified information.

94. Mr. Nicholas Murphy, Reviewer, Office of Global Information Services, Bureau of Administration, Department of State, Washington DC 20520 (When Actually Employed), POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify as an OCA that Department of State information was properly classified, including classified information.
95. * MG Michael Nagata, Joint Staff, the Pentagon, Washington, DC, POC: LTC Patrick O'Hara, (703) 692-6258. He will testify at sentencing about the impact on a specific AOR, including classified information.
96. Lt Col (R) Martin Nehring, USCENTCOM, MacDill AFB, FL, 33621, (805) 443-7669. He will testify about the content of charged documents containing J3 information, including classified information.
97. CW4 Ronald Nixon, ARCYBER, Fort Belvoir, VA, (703) 706-2368. He will testify about the USF-1 GAL.
98. MAJ Katherine Ogletree, Student, CGSC, Ft. Belvoir, VA, 22060 (until OCT, then NIU at Bolling AFB), (443) 640-5754. She will testify about the accused's activities at ATT.
99. SSA Alexander Otte, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness, including classified information.
100. SGT Daniel Padgett, Fort Leavenworth, KS, 66027, (209) 681-3608. He will testify about the accused's training and duties and his interactions with the accused while deployed, including potentially classified information.
101. AMB David Pearce, Deputy Assistant Secretary and Senior Deputy Special Representative for Afghanistan and Pakistan, Bureau of South and Central Asian Affairs, Department of State, Washington DC 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from Afghanistan and Pakistan on the merits, including classified information.
102. Mr. H. Dean Pittman, Principal Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from International Organizations on the merits, including classified information.
103. * Lt Col Robert Pope, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-5165. He will testify on sentencing about the impact on USCENTCOM within the AOR, including classified information.
104. SSG Adam Price, 2nd Brigade Combat Team, 10th Mountain Division (LI), Fort Drum, NY, 13602, (808) 489-0852. He will testify about access to computer systems within the brigade.

105. Ms. Wanda Primrose, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. She is a chain of custody witness.
106. Mr. Jeffrey Ralston, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness.
107. * LTC Rodney Roberts, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-5130. He will testify on sentencing about the impact on operations in Iraq, including classified information.
108. SA Calder Robertson, Europe Branch Office - Computer Crime Investigative Unit, Funari Barracks, APO AE, 09008, DSN: (314) 380-5355. He will testify about his forensic analysis of the accused's digital media, including classified information.
109. Ms. Theresa Robinson, 1 Overcash Avenue, Chambersburg, PA, 17201, (717) 267-5696. She will testify as to the authenticity of the DoD IA awareness training.
110. SA Ronald Rock, Assistant Regional Security Officer, Diplomatic Security Service, Department of State, Washington DC, 20520, Duty Station: Consulate, Mazar-e-Sharif, Afghanistan, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the chain of custody of the DoS firewall and server logs, as well as the impact of the compromise on the US Embassy at Reykjavik, including classified information.
111. Mr. Kim Rosecrans, Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness, including potentially classified information.
112. CW4 Armond Rouillard, G33, US Army Network Enterprise Technology Command, Ft. Belvoir, VA, 22060, (703) 706-2082. He will testify about the US Army computer systems, including their values, including potentially classified information.
113. SGT David Sadtler, 709th MI BN, Harrogate, UK, APO AE, 09468, DSN: 314-262-7467. He will testify about his interactions with the accused at 2/10 Mountain and the accused's activities during their deployment, including potentially classified material.
114. Mr. Doug Schasteen, Wilco Technologies, Inc., 4125 Broadway, Suite 200, Kansas City, MO, 64106, (816) 842-6262 x 158. He will testify about the authenticity of the accused's annual Information Awareness training.
115. Ms. Jacqueline Scott, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-6670 She will testify about the response to the FOIA request for the Apache video, including potentially classified material.
116. AMB Stephen Seche, Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from the Near East on the merits, including classified information.

117. SA David Shaver, U.S. Department of Treasury, Washington DC 20220, (202) 927-9638. He will testify about his forensic analysis of the accused's digital media and information posted to WikiLeaks, including classified information.
118. Ms. Jihreah Showman, Hamilton, GA, 31811, (918) 935-4185. She will testify about the training the accused received before deployment, the accused's statements and activities before deployment, their duties during deployment and the accused's activities during deployment, including potentially classified information.
119. Ms. Kimberly Shupp, Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness, including potentially classified information.
120. SA Thomas Smith, USACIDC, Fort Gordon, GA, 30905, (706) 791-2020. He will testify about the investigation in Iraq.
121. SA Mitchell Song, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness.
122. CPT Loren Stark, Headquarters and Headquarters Battery (HHB), 1st Battalion, 37th Field Artillery Regiment (1-37 FA), 3rd Stryker Brigade, 2d Infantry Regiment (3/2 SBCT), Fort Lewis, WA (Deployed to Afghanistan), (303) 551-5760. She will testify that she was the 2-10 security manager and witnessed the accused sign NDAs and acknowledgement of SCI briefings.
123. Mr. Ralph Steinway, HQDA, G-1 (DAPE-MPT), Pentagon, DC, 20310, (703) 695-5914. He will testify to the authenticity of the accused's ATTRS logs.
124. SA George Street, Chief, Operations Support Division G2X, 902d MI Monterey Field Office, Monterey, CA, (703) 706-2905. He is a chain of custody witness.
125. Ms. Cathryn Strobl, Central Intelligence Agency, McLean, VA 22101, POC: Ms. Jennifer M., (571) 280-3193. She will testify to the authenticity of the CIA Wire logs.
126. * Ms. Susan Swart, former Chief Information Officer, Bureau of Information Resource Management, Department of State, Washington DC 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. She will testify at sentencing about the impact to information systems at the Department of State, including potentially classified information.
127. Mr. Jeffery Szczepanski, Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, (202) 278-2000. He is a chain of custody witness, including potentially classified information.
128. Ms. Tasha Thian, Agency Records Officer, Office of Global Information Services, Bureau of Administration, Department of State, Washington DC 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. She will

testify to the authenticity of Department of State documentation, including potentially classified information.

129. SSG Robert Thomas, III, Headquarters and Headquarters Troop, Support Squadron, 3d ACR, Fort Hood, TX, (254) 833-1705. He will testify about the training received at AIT.
130. Ms. Louis Travieso, USCENTCOM, MacDill AFB, FL, 33621, (813) 827-1163. He will testify about the content of charged documents containing J2 information, including classified information.
131. Mr. Charles Vankleek, USCENTCOM, MacDill AFB, FL, 33621, (813) 529-6771. He will testify about the USCENTCOM Sharepoint Server logs, including potentially classified information.
132. * AMB Shari Villarosa, U.S. Ambassador to Mauritius, Department of State, Washington DC, 20520, Duty Station: U.S. Embassy Port Louis, Mauritius, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. She will testify on sentencing about impact to the counter terrorism effort, including classified information.
133. SFC Garrith Walker, Headquarters and Headquarters Company, 2nd Brigade Special Troops Battalion (2 BSTB), 10th Mountain Division, (LI), Fort Drum, NY, 13602, (315) 772-7946. He is a chain of custody witness.
134. Mr. Greg Weaver, Compliance Branch Chief, US Army Cyber Command, Ft. Belvoir, VA, 22060 G36 Compliance Division, (703) 806-4691. He will testify about information assurance.
135. Ms. Florinda White, CERDEC Software Engineering Directorate, Aberdeen Proving Ground, MD, 21005, (443) 867-3783. She will testify to the authenticity of DCGS-A documentation.
136. SA John Wilbur, Department of Treasury, Washington, DC, 20220, (202) 622-8952. He is a chain of custody witness.
137. SA Alfred Williamson, Digital Forensics and Research Branch, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 305-4488. He will testify about his forensic analysis of the accused's digital media.
138. Mr. Charlie Wisecarver, Bureau of Information Resource Management, Department of State, Washington DC, 20520 (When Actually Employed), POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the NCD system, including potentially classified information.
139. Mr. Alex Withers, Brookhaven National Laboratory, Upton, NY, 11973, (631) 344-7723. He is a chain of custody witness.

140. RADL David Woods, Commander, JTF-GTMO, Guantanamo Bay, Cuba, POC: CDR T. Welsh, DSN 660-9911. He will testify as an OCA that JTF-GTMO information was properly classified, including classified information.
141. AMB Don Yamamoto, Principal Deputy Assistant Secretary, Bureau of African Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from Africa on the merits, including classified information.
142. Mr. Garon Young, Headquarters, Computer Crime Investigative Unit, Quantico, VA, 22134, (571) 305-4485. He is a chain of custody witness.
143. AMB Marie Yovanovitch, Principal Deputy Assistant Secretary, Bureau of European Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. She will testify about the content of cables originating from or sent to Europe or Eurasia on the merits, including classified information.
144. Mr. Joseph Yun, Principal Deputy Assistant Secretary, Bureau of East Asian Affairs, Department of State, Washington DC, 20520, POC: Mr. Jonathan Davis, (202) 647-2227 / Ms. Elizabeth O'Connor, (202) 647-7246. He will testify about the content of cables originating from East Asia and the Pacific on the merits, including classified information.

Several of these witnesses may become unnecessary depending on the outcome of subsequent Court rulings. The prosecution may add witnesses to this list, depending on the outcome of subsequent Court rulings, to include those relating to Military Rule of Evidence (MRE) 505 and any witnesses relating thereto. The prosecution may replace witnesses on this list, should it become necessary due to a Permanent Change of Station, job relocation, change in job position, or change in level of security clearance of a listed witness.

The prosecution acknowledges an ongoing obligation to provide the defense prompt notice of any other potential witnesses that come to its attention and will adhere to the local rules. The prosecution will communicate its final witness list according to Rule 2.1.8 of the Rules of Practice before Army Courts-Martial (2012) and the Court's order.

If the defense intends to produce a witness who is listed above, the defense must provide a separate, appropriate request for that witness in accordance with Rule for Courts-Martial (RCM) 703 and the standard articulated in United States v. Rockwood, 52 M.J. 98, 105 (1999) that a witness request include a "synopsis of expected testimony," not merely a list of topics to be covered. If necessary for a particular witness employed by the United States Government, the defense shall also comply with 5 U.S.C. § 301 and Touhy v. Ragen, 340 U.S. 462 (1951).



ASHDEN FEIN
MAJ, JA
Trial Counsel

Enclosure
Classified Supplement to Witness List

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 15 October 2012.



ASHDEN FEIN
MAJ, JA
Trial Counsel

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army,)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE WITNESS LIST FOR
MERITS AND SENTENCING**

DATED: 15 October 2012

1. On behalf of PFC Bradley E. Manning, his civilian counsel, David E. Coombs, requests the attendance of each of the following witnesses for merits and sentencing:

Merits Witnesses

- 1) CPT Barclay D. Keay, HHC, 4-31 Infantry Battalion, 2nd Brigade Combat Team, 10th Mountain Division, Building 10210 North Riva Ridge, Fort Drum, New York 13682, (603) 520-3219, barclay.keay@us.army.mil, (former night shift OIC for the T-SCIF for 2nd BCT). CPT Keay will testify that music, movies, and games were common on SIPRNET machines. CPT Keay will testify that he went to a lot of people to see if it was a problem to have media on SIPRNET because he did not think it was proper. CPT Keay will testify that he spoke with several individuals within the T-SCIF about this issue, but no one could provide him with an answer. CPT Keay will testify that eventually it became the norm to see soldiers listening to music, watching movies, and playing games on SIPRNET machines. CPT Keay will also testify that CIDNE Afghanistan SIGACTS were not generally looked at unless people got bored.
- 2) CPT Steven J. Lim, First Army Division East, G-2, 4550 Llewellyn Drive, Fort Meade, Maryland 20755, (301) 833-8780, steven.lim@us.army.mil. CPT Lim will also testify that the T-SCIF failed to draft a Standard Operating Procedure (SOP). CPT Lim will testify that he disseminated the link to the U.S. Embassy cables to the various analysts, including PFC Manning. CPT Lim gave the link to the cables to the analysts and the S2 shop sometime in the beginning of January 2010 in order to allow the analysts to better understand the Iraqi political situation. CPT Lim will testify that the comments in the press that stated that the release of the CIDNE database compromised key sources for the United States and put the lives of those sources at risk are inaccurate. CPT Lim will testify that any name within the CIDNE database (Iraq and Afghanistan) were not sources. CPT Lim will testify that those names were put in by a soldier who spoke to some local national and then documented the names. CPT Lim will testify that although a name of an Iraqi or Afghani national may be in CIDNE SIGACTs, those names were likely spelled phonetically and did not contain the full name of the individual. CPT Lim will testify that the CIDNE database is basically a big historical document and something that was used to create work products. CPT Lim will testify that there were no restrictions on what an analyst could choose to save either to his computer or on computer disk from the SIPRNET

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or CIDNE. CPT Lim will testify that he would recommend saving to laptop or computer disk. CPT Lim will testify that he would make this recommendation just in case the SIPRNET went down or the shared drive went down or a file on the shared drive or SIPRNET became corrupted. CPT Lim will testify that he saved items from the SIPRNET to his individual computer or computer disk on a regular basis. CPT Lim will testify that if an analyst wanted to harm the United States or aid the enemy, he believes an analyst would have access to far more damaging information than old significant activity reports. CPT Lim will also testify that there were no stated restrictions on what an analyst could look at on SIPRNET. CPT Lim will testify that there were no restrictions on what an analyst could choose to save from the SIPRNET. CPT Lim will testify that he believed PFC Manning's military experience was "very minimal." He knew that PFC Manning was only in the Army for a few years and that Fort Drum was PFC Manning's first duty assignment. In spite of being junior in the Army, CPT Lim will testify that PFC Manning did become very good at using programs on the DCGS-A machines that the analysts used. CPT Lim will testify that PFC Manning got really good at working with graphs and charts. Since he was so good, CPT Lim will testify that the S2 shop would give PFC Manning projects for pattern analysis or historical trends using data, graphs and numbers.

- 3) CPT Casey Fulton, 29311 S. Lakeshore Drive, Agoura, California 91301, (404) 769-8984. casey.m.martin@us.army.mil. CPT Fulton will testify that PFC Manning was frequently assigned computer/data entry based products that required a certain level of computer skills. CPT Fulton will testify that PFC Manning was assigned these tasks because he was good with computers. CPT Fulton will testify that around December of 2009, a few of the soldiers in the shop were gathered around SPC Showman's computer to watch a helicopter insurgent video. CPT Fulton will testify that when she returned from leave in April 2010, she asked the soldiers in the shop if they had seen the video of the journalists being killed on the news. CPT Fulton will testify that analysts were allowed to look at anything that they wanted on the SIPRNET. CPT Fulton will testify that it was within the scope of PFC Manning's job, as an all source analyst, to look at information concerning countries other than Iraq. CPT Fulton will also testify that it was part of an all source analyst's job to review material concerning the political situation and other events or circumstances concerning other countries. CPT Fulton will testify that she would not discourage PFC Manning from researching on the SIPRNET or from reading information that did not concern Iraq. CPT Fulton will testify that the whole point of PFC Manning's job was fusion. CPT Fulton will testify that an all source analyst needs to consider and evaluate "all sources" to adequately perform their job.
- 4) CPT Thomas M. Cherepko, NATO Force Command Madrid, Madrid, Spain 09649, (412) 387-3090, thomas.m.cherepko@us.army.mil. CPT Cherepko was the assistant S-6 for the 2BCT. CPT Cherepko will testify that the information assurance procedures were not being followed by the brigade. CPT Cherepko will testify that he knew that soldiers would go to the local market and buy movies, music and games and place the information on their SIPR and NIPR computers. CPT Cherepko will

testify that he tried to address the issue with his leadership but that the leadership did not seem to care and nothing was done. CPT Cherepko will testify that when the mood struck him, he would scan the shared drive for music, movies and games and that he would find this material on the shared drive every day. CPT Cherepko will testify that every time that he found unauthorized material on the SIPRNET/shared drive, he would delete it. CPT Cherepko will testify that the brigade did not receive a formal IA certification and accreditation inspection during its tour, contrary to the guidance in MNF-I Directives. CPT Cherepko will also testify that he knew about personal software being loaded on the SIPRNET and he would remove the software when he came across it. CPT Cherepko will testify that the Brigade did not conduct any training on what soldiers could and could not add on their computers while in theatre. CPT Cherepko will testify that the shared drive did not have any restrictions on it. CPT Cherepko will testify that PFC Manning did not need to hack into anything to view information on the shared drive or on SIPRNET. CPT Cherepko will testify that PFC Manning was given access to the network and did not need to break any encryption. CPT Cherepko will testify that the brigade did not put out any limitations on what a person could look at on the shared drive. Finally, CPT Cherepko will testify that the brigade did not put out any limitations on what a person could chose to save to their individual computer or to CD.

- 5) CW2 Joshua D. Ehresman, HSC, HHBN 2d ID, Camp Red Cloud, Korea APO AP 96258, 001-82-505-732-7619, joshua.d.ehresman@us.army.mil. CW2 Ehresman will testify concerning his expectations of the analysts that worked within the S-2 Section. Specifically, CW2 Ehresman will testify concerning the guidance that he provided and of the performance of PFC Manning. CW2 Ehresman will testify that analysts were permitted to save information from the SIPRNET. CW2 Ehresman will testify that there was no need for authorization to burn information down on to CD. CW2 Ehresman will testify that an analyst could save even a large amount of information for their own person library to refer back to from time to time. CW2 Ehresman will testify that an analyst could view the Afghanistan CIDNE SIGACTS and database. CW2 Ehresman will testify that he viewed the Afghanistan database while in Iraq. CW2 Ehresman will testify that as long as you did not download a program, you could run any program from CD on SIPRNET. CW2 Ehresman will testify that the practice of running a program from a CD or saving an executable file was permitted by the S2 shop. CW2 Ehresman will testify that he believed PFC Manning was well known to personnel in the S2 Section due to his computer skills and previous computer background. CW2 Ehresman will testify that "PFC Manning never told me that he had no loyalty to the United States." This testimony will be used to rebut any testimony offered by the Government from Ms. Jihreah Showman. CW2 Ehresman will testify that the CIDNE database was just a historical record of what happened from the U.S.'s point of view on any given day. CW2 Ehresman will testify that if an analyst truly wanted to harm the U.S., other things such as future operations, troop movements, human intelligence reports, or the capabilities of our military equipment would be exponentially more damaging than SIGACTS.

- 6) WO1 Kyle J. Balonek, HHBN, G2, 10th Mountain Division, Fort Drum, New York 13602, (315) 772-8265, kyle.balonek@us.army.mil. WO1 Balonek will testify that it was common for soldiers to play music and watch movies in the T-SCIF. WO1 Balonek will testify that music was on the shared drive and allowed by the S-2. WO1 Balonek will testify that no one was inspecting soldiers as they entered or exited the T-SCIF. WO1 Balonek will testify that soldiers were allowed to bring in bags and writable CDs. WO1 Balonek will testify that an analyst could look at anything they wanted on the SIPRNET. Additionally, he will testify that an analyst could save any information that they wanted from the SIPRNET on either the hard drive of their computer or, if properly marked, on to a CD.
- 7) SFC Paul David Adkins, HHC, 2nd BCT, Fort Drum, New York 13602, (315) 772-8260, paul.david.adkins@us.army.mil. SFC Adkins will testify that he had PFC Manning work on improving an existing Microsoft Access Program. The program was initially designed to track significant enemy activity and contained historic data between 2005 and 2007. The data pertained to activity centered primarily in Radwaniyah, Justifiyah, Mahmudiyah and the Sunni triangle South of Baghdad and included coalition and enemy BDA statistics. The program was not used to actively collect intelligence when PFC Manning modified it. SFC Adkins will testify that he hoped PFC Manning could improve its performance and make it a reliable backup system in case their tracker in theater failed or was unreliable. SFC Adkins will also testify that he instructed analysts that they could add programs to their DCGS-A computers that were needed for "mission essential" purposes.
- 8) SGT David A. Sadtler, 709 MI Battalion, U.S. Army Garrison, Wiesbaden, (DSN) (314) 262-7183, david.sadtler@us.army.mil. He is a 35N – signal intelligence analyst. SGT Sadtler will testify that a lot of people had support from other people in their unit, but that he didn't believe PFC Manning had any support from his chain of command. SGT Sadtler will testify that PFC Manning voiced his concern that no one in his immediate chain of command seemed to care about the mission. SGT Sadtler will testify that he recalls an incident when PFC Manning found a report that apparently upset him. SGT Sadtler will testify that PFC Manning had found in the report that some Iraqis or possibly some Moroccans were being arrested at a printing press facility. SGT Sadtler will testify that attached to this report was some evidence which had been collected; however, this information was in Arabic. SGT Sadtler will testify that the translation of the Arabic indicated that the arrested individuals were simply trying to expose corruption within the Iraqi government. SGT Sadtler will testify that PFC Manning tried to show the translation to his superiors. SGT Sadtler will testify that PFC Manning was very upset about the issue. SGT Sadtler will testify that everyone stonewalled PFC Manning on the issue as no one thought it was a big deal. SGT Sadtler will also testify that his main job was to document SIGACT reports for the battalion. SGT Sadtler will testify about the process for the development of a SIGACT and how the information went from the unit to ultimately within the CIDNE database.

- 9) SGT Lorena Cooley, HHC, 210 BSB, 10220 N. Riva Ridge Loop, Fort Drum, New York, 13602, (315) 772-2383, lorena.cooley@us.army.mil. SGT Cooley will testify that at the time of the deployment she was a Specialist. SGT Cooley will testify that she worked with PFC Manning. During her time in the T-SCIF, she will testify that it was normal for analysts to save information from the SIPRNET on to the shared drive. SGT Cooley will also testify that it was normal to save information on to individual computer hard drives and CD. SGT Cooley will testify that there was no restriction on what an analyst could choose to save from the SIPRNET. SGT Cooley will also testify that she recalls PFC Manning being tasked to rebuild and update a program by SFC Adkins. SGT Cooley will testify that she believes that PFC Manning built the shell for the program on the NIPERNET and then transferred it to the SIPRNET based upon SFC Adkins' guidance. SGT Cooley will testify that PFC Manning never made any anti-U.S. statements. SGT Cooley will also testify that she is aware that PFC Manning filed an Equal Opportunity complaint against then SPC Jihrleah Showman. SGT Cooley's testimony will be used to rebut any testimony offered by the Government from Ms. Jihrleah Showman.
- 10) SGT Sheri M. Walsh, 13208 Burnes Lake Drive, Tampa, Florida 33612, (813) 988-6315, sheri.walsh@us.army.mil. SGT Walsh will testify about the work that she did along with PFC Manning during their time in the T-SCIF. She will also testify about the fact it was normal for analysts to save information from SIPR on the shared drive, on their computer hard drive, or on writable compact disks.
- 11) SGT Chad Madaras, HHC, 2-14 IN, 2BCT, 10th MTN DIV, Fort Drum, New York, 13602, (315) 404-6275, chad.madaras@us.army.mil. SGT Madaras will testify that he was a fellow analyst working with PFC Manning. SGT Madaras will testify that at the time of the deployment he was a Specialist. SGT Madaras will testify that PFC Manning had spoken to him about being interested in U.S. politics and potentially running for political office at some point in the future. SGT Madaras will testify that PFC Manning was known to be the "computer guy" in the unit. SGT Madaras will testify that PFC Manning was asked in the past to work on the company's computers when they were not operating properly. SGT Madaras will testify that prior to the deployment, he received training with PFC Manning on the DCGS-A machines that the analysts would be using in Iraq. SGT Madaras will testify that during his training he was never told that he could not add executable files on his desktop. SGT Madaras will testify that the DCGS-A machines did not have M-IRC Chat installed as one of its base programs. SGT Madaras will testify that he and other analysts believed M-IRC Chat was a mission essential program. SGT Madaras will testify that he had PFC Manning add M-IRC Chat on his DCGS-A machine. SGT Madaras will testify that PFC Manning added M-IRC Chat as an executable program on his desktop. SGT Madaras will testify that when you clicked on the desktop icon, M-IRC Chat would then start. SGT Madaras will testify that all of the other analysts added M-IRC Chat to their desktops too. SGT Madaras will also testify that the DCGS-A machines would often crash in Iraq. SGT Madaras will testify that when the DCGS-A machines

would crash, PFC Manning was frequently asked to look at the computer to see if he could fix the problem.

- 12) Mr. Cassius Hall, IS Division, INSCOM, G2, (703) 428-4340, Secure 964-4340, cassius.n.hall.civ@mail.mil. Mr. Hall will testify as an intelligence analyst expert witness. Mr. Hall will testify that he conducted open source research on each of the charged SIGACTS in Specifications 5 and 7 of Charge II. Mr. Hall will testify that the vast majority of the information within the SIGACTS from Specifications 5 and 7 of Charge II was already in the public realm prior to PFC Manning's alleged misconduct. Mr. Hall will explain why the SIGACTs are basically a historical document of little intelligence value to the enemy. Mr. Hall will testify about how SIGACTs are used by intelligence analysts to create their work product. Mr. Hall will also testify that videos charged in Specifications 2 and 11 of Charge II are similar to countless such videos currently available on the internet. Mr. Hall will testify that he does not believe that anything within the charged videos could be used to the injury of the U.S. or to the benefit of any foreign nation. Mr. Hall will testify that he basis his testimony on the Government's own classification determination that the video charged in Specification 2 of Charge II was unclassified and his review of that video as well as the video charged in Specification 11 of Charge II. Finally, Mr. Hall will testify about the other charged documents in Specifications 3, 10, and 15.
- 13) Ms. Jihreah W. Showman, Hope Mills, North Carolina, 28348, (918) 935-4185. Ms. Showman will testify that at the time of the deployment she was a Specialist. Ms. Showman will testify that shortly after the deployment she ETS'd from the Army. Ms. Showman will testify that she believes that she was the first in the T-SCIF to see the "Apache video" which she found of her own accord in a network folder. Ms. Showman will testify that she called CW2 Ehresman, SSG Balonek, and another soldier over to see the video. Ms. Showman will testify that over the next few days, several of the T-SCIF personnel debated about whether the video showed a camera or a rocket propelled Grenade (RPG) launcher and whether the actions of the Apache crew were appropriate under the circumstances. Ms. Showman will also testify that she had another soldier add M-IRC Chat to her computer. Ms. Showman will testify that she viewed M-IRC Chat as a mission essential program. Ms. Showman will testify that the program was not added by Mr. Milliman. Ms. Showman will testify that M-IRC Chat was added to her desktop as an executable file. Ms. Showman will testify that you would click the icon on the desktop and the program would then start. Ms. Showman will also testify that she was aware that PFC Manning had filed an EO complaint against her.
- 14) Colonel (Retired) Morris Davis, Howard University School of Law, 2900 Van Ness Street, N.W., Washington, DC 20008, (202) 806-8172 (office), (703) 589-8603 (cell), mdavis@law.howard.edu. Col. Davis will testify as an expert witness. Col. Davis will testify that he was appointed to serve as the Chief Prosecutor for the Office of Military Commissions in September of 2005. Col. Davis served as the Chief Prosecutor from then until October of 2007. As the former Chief Prosecutor, Col.

Davis will testify that he is very familiar with Detainee Assessment Briefs (DABs). Col. Davis will testify that the DABs were basically summaries of biographic and capture information pertaining to a specific detainee prepared by the Joint Intelligence Group ("JIG") of Joint Task Force Guantanamo. Col. Davis will testify that none of the memorandums contained actual intelligence reporting or names of sources. Instead, Col. Davis will testify the DABs were basically memorandums written for the U.S. Southern Commander in order to provide the command and other governmental officials general information about a specific detainee, and were not viewed as being particularly sensitive information. Col. Davis will testify that he met with members of the Obama transition team assigned to work on Guantanamo detainee policy in late November or early December 2008 and he was aware that President Obama created a Guantanamo Review Task Force (GRTF) on 22 January 2009. He will testify that the GRTF was charged with conducting a review of each of the detainees at GTMO. He will testify that the DABs were a very small part of the overall review by the GRTF. Col. Davis will testify that in 2006 and 2007, the Pentagon released the names of all GTMO detainees and also released the records concerning the Combatant Status Review Tribunals (CSRT) and the Administrative Review Boards (ARB). Col. Davis will testify that the information within the release of the names, the CSRTs and the ARBs would detail much, if not all, of the information that would be contained within the DABs.

- 15) Mr. Jason Milliman, Palmyra, VA, 22963, (434) 995-4441. Mr. Milliman will testify that he was a civilian contractor in Iraq assigned to work as the DCGS-A Field Software Engineer. Mr. Milliman will testify that he worked in this position from November 2007 to December of 2010. Mr. Milliman will testify that the only machines he worked on were the DCGS-A machines. Mr. Milliman will testify that military members were not authorized to work on the DCSG-A machines. Mr. Milliman will testify that the DCGS-A machines would break down and that he would attempt to fix them when they did break down. Mr. Milliman will testify that heat was a major problem for the DCGS-A machines. Mr. Milliman will testify that the DCGS-A machines would run hot even in an air conditioned room. Mr. Milliman will testify that the DCGS-A machines also sucked in a lot of dust. Mr. Milliman will testify that due to running hot, the heat, and the dust the DCGS-A machines were prone to crash. Mr. Milliman will testify that the DCGS-A machines would also crash if a user was storing a lot of files on the desktop. Mr. Milliman will testify that when a DCGS-A machine crashed, sometimes you could recover information and sometimes you couldn't recover information. Mr. Milliman will testify that if a soldier wanted to add software to their DCGS-A machine, they were supposed to ask him for permission. Mr. Milliman will testify that he was the only one with administrator rights on the DCGS-A machines. Mr. Milliman will testify that he was asked to install M-IRC Chat on the DCGS-A machines. Mr. Milliman will testify that M-IRC Chat was not the collaboration tool that the DCGS-A machine had as part of its approved package. Mr. Milliman will testify that he obtained approval to install a specific version of M-IRC Chat on the DCGS-A machines. Mr. Milliman will testify that as part of his job, he noticed that some soldiers had placed programs such as

executable files on their desktop of the DCGS-A machines without authorization. Mr. Milliman will testify that he knew of a couple of officers who always wanted to add the latest version of something and they would take it upon themselves to install in on the desktop. Mr. Milliman will testify that he had situations where an S-1 Administrator would run a password crack file in an attempt to bypass his administrator password so that they could add software to the DCGS-A machine without his approval. Mr. Milliman will testify that every unit, to include the 2-10 BCT thought the DCGS-A machines were their machines. Mr. Milliman will testify that the units thought it was their network so they would do whatever they liked with the machines and add whatever they wanted to. Mr. Milliman will testify that he would tell the units they couldn't do that. Mr. Milliman will testify that soldiers told him that they were adding software they felt was mission essential. Mr. Milliman will testify that he wasn't actively looking for unauthorized software being added on the desktop. Mr. Milliman will testify that the practice of adding unauthorized software could have been common and he would not have been told. Mr. Milliman will testify that the DCGS-A machines could have been configured to prevent the ability to save executable files to the desktop. Mr. Milliman will testify that this was not done. Mr. Milliman will testify that he does not know what DCGS-A machines were not configured to prevent the ability to save executable files to the desktop.

- 16) Mr. Trent Struttman, Digital Forensic Examiner, Cyber Agents, Inc., 616 Pasadena Drive, Lexington, Kentucky, 40503, ts@cyberagentsinc.com, (859) 983-6655. Mr. Struttman will testify as an expert witness. Mr. Struttman will testify about his inspection of hard drives provided to him from the Government. Mr. Struttman will testify that the hard drives were computers from PFC Manning's unit during the deployment. Mr. Struttman will testify that his inspection of the hard drives disclosed the presence of thousands of unauthorized games, music files, movie files and software on the various T-SCIF computers.
- 17) Mr. Adrian Lamo, Carmichael, CA 95608, (916) 994-1024. Mr. Lamo will testify that he had an instant messenger chat conversation with PFC Manning between 21 May and 26 May 2010. Mr. Lamo will testify that during that conversation PFC Manning told him that if he were more malicious he could have sold the information to China or Russia. Mr. Lamo will testify that he asked PFC Manning why he didn't sell the classified information to China or Russia. Mr. Lamo will testify that PFC Manning responded that "because its public data... it belongs in the public domain... information should be free... another state would just take advantage of the information... try and get some edge ... if it is out in the open... it should be for a public good." Mr. Lamo will also testify that he asked PFC Manning if he could be a spy. Mr. Lamo will testify that PFC Manning responded, "I could never be a spy. Spies don't post things for the World to see."
- 18) Mr. Zachary Antolak, 7140, 166th Street Apartment 303, Tinley Park, IL 60477, zjemptv@gmail.com, (708) 308-8838 Mr. Antolak will discuss an instant messenger chat conversation that he had with PFC Manning over the course of six months in

2009. The conversation began on 21 February 2009 and ended on 11 August 2009. During that conversation, Mr. Antolak will testify that PFC Manning stated that he was reading a lot more and delving deeper into philosophy and politics. Mr. Antolak will testify that PFC Manning stated that he was hoping to apply what he was learning in his current position as an analyst to provide more information to the officers above him and to his commanders. Mr. Antolak will testify that PFC Manning was hoping that the information he provided to his officers and commanders would help save lives. Mr. Antolak will also testify that PFC Manning told him that he was "more concerned about making sure that everyone, soldiers, marines, contractors, even the local nationals, get home to their families." Mr. Antolak will testify that PFC Manning went on to say that he felt "a great responsibility and duty to people." Mr. Antolak will testify that PFC Manning stated that he believed what the Army tries to make itself out to be "a diverse place full of people defending the country... male, female, black, white, gay, straight, Christian, [J]ewish, Asian, old or you[n]g." Mr. Antolak will testify that PFC Manning told him that it didn't matter to him what a person's background was since "we all wear the same green uniform...." During the same conversation, Mr. Antolak will testify that PFC Manning told him "sometimes [I] wish it were all black and white like the media and politicians present it... him, he's the bad guy, oh and he, he's the good guy... it[']s all shades of blurry grey." Mr. Antolak will testify that PFC Manning also told him that he constantly had foreign affairs on his mind. Mr. Antolak will testify that PFC Manning stated that "one of the bad parts of the job, [was] having to think of bad stuff." Finally, Mr. Antolak will testify that PFC Manning told him that he wanted to pursue a career in politics after going to college.

19) Mr. Charles Ganiel, Command SSO, HQ ATEC, Aberdeen Proving Ground, Maryland 21901, charles.j.ganiel.civ@mail.mil, (443) 861-9673. Mr. Ganiel will testify as a security expert witness. Mr. Ganiel will testify that he conducted open source research on each of the charged diplomatic cables in Specification 13 of Charge II. Mr. Ganiel will testify that the vast majority of the information within the charged diplomatic cables from Specification 13 of Charge II was already in the public realm prior to PFC Manning's alleged misconduct.

20) Professor Yochai Benkler, Jack N. and Lillian R. Berkman Professor for Entrepreneurial Legal Studies, Harvard Law School; Faculty Co-Director, Berkman Center for Internet and Society, Harvard University, Hauser 304, (617) 496-3022, ybenkler@law.harvard.edu. Professor Benkler will testify as an expert witness concerning the history of the WikiLeaks organization and how it was viewed prior to the charged leaks. Professor Benkler will testify that at the time PFC Manning would have given information to WikiLeaks, that WikiLeaks was viewed as a journalistic organization with an impressive history of exposing fraud and corruption within governments and corporations. Professor Benkler will testify about an article that he wrote in 2011 entitled "A Free Irresponsible Press: WikiLeaks and the Battle Over the Soul of the Networked Fourth Estate." See 46 Harv.C.R.L. L. Rev. 311, 2011. As part of that article, Professor Benkler reviewed the publicly available copy of the

document charged in Specification 15 of Charge II. Professor Benkler's article cites and extensively references the document charged in Specification 15 of Charge II. Professor Benkler will testify about how the U.S. Government overstated and overreacted to the leaked documents and WikiLeaks. Professor Benkler will also testify how the traditional media played a role in perpetuating the overstated and overheated public response by government actors, both administrative officials and elected representatives. Professor Benkler will testify that the Government's overreaction resulted in WikiLeaks being viewed as a security threat as opposed to a legitimate journalistic endeavor. Finally, Professor Benkler will testify that WikiLeaks is in fact a journalistic endeavor, no different for legally pertinent purposes than the New York Times, the Washington Post, or a wide range of smaller journalistic publications.

- 21) Mr. Daniel Cindrich, (913) 684-5983; daniel.cindrich@us.army.mil; Intelligence and Security Analyst. Information Dominance Warfare Qualified (IDW); Center for Army Lessons Learned (CALL), U.S. Army Combined Arms Center, Fort Leavenworth, Kansas 66027. Mr. Cindrich will testify as an expert witness. Mr. Cindrich will testify that as an intelligence analyst for CALL, one of their responsibilities is put out rapid adaption information to the field. Mr. Cindrich will testify that rapid adaption is a process whereby information is analyzed and disseminated in a timely manner relative to the criticality of actions required for soldiers and leaders to adapt that information to current operations and DOTMLPF (doctrine, organization, training, material, leadership & education, personnel, and facilities) development. Mr. Cindrich will testify that rapid adaption is a process that is designed to save soldier's lives and improve the effectiveness and/or efficiency of Army operations. Mr. Cindrich will testify that since the charged leaks, CALL has had no direct or indirect tasking to collect, analyze, or disseminate lessons learned on the WikiLeaks incidents or the information publicly disclosed in this case.

Sentencing Witnesses

- 22) COL David M. Miller, Brigade Modernization Command, Fort Bliss, Texas 79916, (915) 569-7205, david.miller3@us.army.mil, Former 2nd BCT Commander. COL Miller will testify that the brigade did not want to take the wrong personnel forward, nor did the brigade want to leave a large rear detachment behind for a small staff to manage and lead. COL Miller will testify that he expected the leaders in the Brigade to identify those soldiers who should not deploy. COL Miller will testify that his S-2, the officer in charge of PFC Manning, MAJ Clifford Clausen, was not up to the standard of performance that he expected out of someone in that position. COL Miller will testify that based upon his discussions with then LTC Paul Walter and LTC Brian Kerns, COL Miller decided it was best to remove MAJ Clausen from his position as the S2 and place CPT Lim into that job. COL Miller will testify that from his perspective, the issues surrounding PFC Manning should have been something that the S2 personnel would have been more involved in than the company. COL Miller will testify that there were several issues that may have impacted the response to PFC Manning's issues. First, during that time period, the former company

commander, MAJ Elijah Dreher was relieved over property accountability and due to the fact he was not making good decisions. Second, MSG Adkins, the NCOIC in the S2 Section, was "marginal, but not bad enough to either relieve or replace." COL Miller will testify that then MSG Adkins was technically competent but that he lacked leader skills expected of a MSG. COL Miller will also testify that commanders (in conjunction with their unit security manager) are allotted 30 days to submit an initial DA 5248-R following the discovery of credible derogatory information on a soldier. COL Miller will testify that after the initial DEROG is submitted and processed by SID/CCF, the unit has 90 days to submit a follow-up 5248-R if there is a pending investigation or adverse action taken (e.g., summary court-martial). COL Miller will testify that once the investigation/proceedings are completed and the soldier has been cleared/charged of offense, the unit must submit a final DEROG. In this case, COL Miller will testify that SFC Adkins failed to keep the chain of command informed of PFC Manning's emotional and mental condition. COL Miller will testify that this failure resulted in the command not submitting a DEROG in a timely manner.

- 23) CAPT David L. Moulton, University Neuropsychiatric Institute, 501 Chipeta Way, Salt Lake City, Utah 84108, david.moulton@hsc.utah.edu, (801) 583-2500. CAPT Moulton will testify as an expert witness. CAPT Moulton will testify that PFC Manning was gay and was suffering from Gender Identity Disorder (GID) before and during the deployment. CAPT Moulton will testify that PFC Manning had no ability to turn to mental health for assistance given the fact that he would be recommended for separation if he did. Consequently, PFC Manning's struggles compounded and started to erode his ability to function properly while at work. CAPT Moulton will testify that PFC Manning's high IQ and social ineptness compounded these struggles. CAPT Moulton will testify that PFC Manning had regressed stages of development and was still in the post-adolescent idealistic stage where he believed he could change the world and make the world a better place. CAPT Moulton will testify that PFC Manning's idealism along with a narcissistic personality trait resulted in PFC Manning believing that he was capable of making the determination of what information should and should not be released for the public good. CAPT Moulton will testify that PFC Manning struggles for acceptance and suffers from a mild form of Asperger's. CAPT Moulton will testify that PFC Manning's condition makes it difficult for him to pick up on social cues and causes him to sometimes say or do things that others might take offense to, but that he does not intend or realize is offensive. CAPT Moulton will testify that PFC Manning's condition would make it difficult for him to make close friends. CAPT Moulton will testify that due to his struggle for acceptance, PFC Manning would seek approval from others that what he is doing is the right thing. CAPT Moulton will testify that this would also cause PFC Manning to be very sensitive to criticism or someone telling him that he has done something wrong. CAPT Moulton will testify that this condition is undoubtedly why PFC Manning reached out to Mr. Adrian Lamo. Ultimately, CAPT Moulton will testify that PFC Manning's actions can be explained as an effort to do what he believed was the right thing for the right reason but under flawed reasoning.

24) LTC Brian Kerns, Old Dominion University, 4th Brigade Cadet Command, Rollins Hall, Room 119, Norfolk, Virginia 23529 (757) 683-3668, brian.kerns@us.army.mil, (Former Executive Officer for 2nd BCT). LTC Kerns will testify that he was MAJ Clausen's direct supervisor. LTC Kerns will testify that he believed that MAJ Clausen could not provide COL Miller with accurate or timely estimates or intelligence, and could not talk to COL Miller in a way that served the Commander's needs. LTC Kerns will testify that the brigade commander finally lost confidence in MAJ Clausen and made the decision after approximately 6 months to move him. LTC Kerns will testify that the unit did not conduct a formal relief for cause, but moved him to a transition team. According to LTC Kerns, MAJ Clausen's performance was weak, but not so weak as to warrant a relief for cause. LTC Kerns will testify that he did not believe MAJ Clausen was a strong leader. LTC Kerns will testify that MAJ Clausen tried to decentralize operations but that he didn't have enough oversight to control the S-2 Section. LTC Kerns will testify that MAJ Clausen empowered junior members who were too inexperienced to do the job and did not step in to correct a situation when the junior member made a mistake. LTC Kerns will testify that MAJ Clausen was unable to mentor or develop younger officers and didn't have much direct control over the shop. LTC Kerns will also testify that MAJ Clausen was handicapped by weak NCO leadership in his shop. Specifically, LTC Kerns will testify that MAJ Clausen's NCOIC, then MSG Adkins, was not an effective leader. LTC Kerns will testify that both MAJ Clausen and MSG Adkins were weak leaders. LTC Kerns will testify that he was unaware of any leadership guidance provided in the S2 sections regarding enlisted personnel management. LTC Kerns will testify that it did not surprise him that MAJ Clausen put out information that Warrant Officers and Noncommissioned Officers were to defer all management responsibilities to MSG Adkins. LTC Kerns will testify that perhaps the command was too generous with MAJ Clausen and that removing him from his position earlier would have been advantageous. LTC Kerns will testify that he believes PFC Manning's mental and emotional issues were more than enough to put others at risk and should have resulted in an immediate DEROG. LTC Kerns will testify that he did not know anything about PFC Manning's conduct until a recommendation for separation was made by the chain of command. LTC Kerns will testify that none of the mental or emotional health concerns, prior to May of 2010, made it to his level. LTC Kerns will testify that the failure to properly DEROG PFC Manning's was the unit's biggest failure. LTC Kerns will testify that he believes that the unit should have pulled PFC Manning's access to classified information much earlier. LTC Kerns will testify that the unit should have recognized him as needing help and that his condition made him unfit for service as an intelligence analyst. LTC Kerns will testify that the assistant S6 for the brigade, CPT Cherepko, came to him with concerns about unauthorized personal media on SIPRNET machines. LTC Kerns will testify that according to CPT Cherepko, personnel were putting unauthorized media on computers such as programs, games, videos, and music. LTC Kerns will testify that it was fairly common when the unit arrived to see games, music and movies on the SIPRNET. LTC Kerns will testify that he believed that it was fairly common across Iraq. LTC Kerns will testify that he tried to get the staff to do the right thing, but

media on the SIPRNET continued to be the standard. LTC Kerns will testify that at no point was UCMJ punishment applied to those who were placing unauthorized information on SIPRNET. LTC Kerns will testify that with respect to the media on the SIPRNET, he believed that the Army had become too comfortable working on SIPRNET while deployed. LTC Kerns will testify that it is his opinion that this may have bred some complacency because of the ease of access. LTC Kerns will testify that he believes that most soldiers did not realize that placing music and other media on SIPRNET computers was wrong because of how prevalent those items were across Iraq. LTC Kerns will testify that he also believes that Garrison physical security regulations would make SIPRNET too impractical for use in combat and would negate our ability to effectively use SIPRNET. LTC Kerns will testify that after PFC Manning was arrested, COL Miller ordered him to take a complete look at INFOSEC across the brigade. LTC Kerns will testify that he formed a working group consisting of the SGM, S2, S6 and IO personnel to look at how the brigade was operating. Based upon this review, LTC Kerns will testify that the S6 removed universal ability to write to disks; there was additional compartmentalizing of information within the BCT based on a need to know; the S6 instructed staff on how to lock out directories and the brigade established an SOP on the implementation for reviewing infractions for potential DEROG actions.

- 25) MAJ Elijah A. Dreher, Shaw AFB, South Carolina 29152, elijah.dreher@us.army.mil, (803) 885-8267 (Former HHC, 2BCT Commander). MAJ Dreher will testify that he had very little interaction with the S2 shop. MAJ Dreher will testify about the guidance he gave regarding whether soldiers would deploy. MAJ Dreher will testify that he not made aware of any effort to keep PFC Manning from deploying. MAJ Dreher will testify that his understanding was that PFC Manning's issues came about after deploying. MAJ Dreher will testify that he was not aware that SFC Adkins recommended to PFC Manning that he self-refer to Mental Health or that PFC Manning even went to Mental Health prior to the deployment. MAJ Dreher will also testify that he was not adequately informed of PFC Manning's mental health issues by MAJ Clausen or SFC Adkins.
- 26) MAJ Clifford D. Clausen, 700 Aspen Street, Aurora, Colorado 80017, clifford.clausen@us.army.mil, (303) 677-1190. MAJ Clausen will testify that he was the 2/10 BCT S-2 until being replaced by CPT Lim. MAJ Clausen will testify that SFC Adkins did tell him about an outburst by PFC Manning before the deployment, but that he does not remember SFC Adkins having a conversation with him about leaving PFC Manning on rear detachment. MAJ Clausen will testify that he did not recall talking to the company commander about PFC Manning's behavioral health issues. MAJ Clausen will testify that it was his practice to not take many issues outside of the S2 Shop, and that he believed the supervision policy of having every issue go through SFC Adkins was fine. Finally, MAJ Clausen will testify that music CDs were allowed in the T-SCIF.

- 27) CPT Matthew W. Freeburg, Building 1607, Randolph Road, Fort Sill, Oklahoma 73502, matthew.freeburg1@us.army.mil, (915) 588-8102. Former Company commander and property book holder for all the computers within HHC, 2BCT. CPT Freeburg will testify that he never received any information from the S2 Section concerning any of PFC Manning's mental or emotional issues until after the alleged assault of SPC Showman. CPT Freeburg will testify that after the alleged assault, he removed PFC Manning from the T-SCIF and sent him to work in the supply room. CPT Freeburg will testify that he then gave PFC Manning an Article 15 reducing him from SPC to PFC. Along with the Article 15, CPT Freeburg will testify that he filled out a DEROG form in order to suspend PFC Manning's security clearance. CPT Freeburg will testify that he then went to CPT Worsley at Behavioral Health to discuss PFC Manning's condition. CPT Freeburg will testify that CPT Worsley told him that PFC Manning's troubles were deeper than the Army could fix and that he should be separated. CPT Freeburg will testify that he then sent PFC Manning to CPT Critchfield for an evaluation. Based upon the mental health recommendations, CPT Freeburg will testify that he initiated the chapter paperwork to separate PFC Manning. CPT Freeburg will testify that after he became aware of the full extent of PFC Manning's previous emotional and behavioral problems, that it was shocking to him that something more serious had not been done to address PFC Manning's issues prior to him allegedly assaulting SPC Showman and receiving an Article 15. CPT Freeburg will testify that he was aware that personnel had placed video games, movies, and music on the SIPRNET drive.
- 28) CPT Michael R. Johnson, 4th Brigade, 25th Airborne Inf. Div, Joint Base Elmendorf-Richardson, AK 99505, (907) 384-0265, michael.r.johnson9@us.army.mil. CPT Johnson will testify that SFC Adkins was in charge of all enlisted responsibilities. CPT Johnson will testify that whenever he engaged the soldiers on issues as a leader that he was told to back off by SFC Adkins, CPT Lim, and MAJ Clausen. CPT Johnson will testify that the S2, MAJ Clausen, did not set standards for the unit. Based upon this lack of leadership, CPT Johnson will testify that a lot of conduct was ignored. CPT Johnson will testify that he remembers venting to MAJ Clausen and SFC Adkins about how nothing was being done to address PFC Manning's mental and emotional issues. CPT Johnson will state that when he addressed these concerns to MAJ Clausen and SFC Adkins, he was told that he needed to stay in his lane. After the change in leadership within the S2 Section, CPT Johnson will testify that all of the officers sat down to discuss soldier standards in an attempt to address substandard conduct. CPT Johnson will testify that SFC Adkins objected to any changes and would not allow anyone to address the issues surrounding PFC Manning. As such, CPT Johnson will testify that nothing was done to address PFC Manning's mental and emotional issues.
- 29) CPT Barclay D. Keay, HHC, 4-31 Infantry Battalion, 2nd Brigade Combat Team, 10th Mountain Division, Building 10210 North Riva Ridge, Fort Drum, New York 13682, (603) 520-3219, barclay.keay@us.army.mil, (former night shift OIC for the T-SCIF for 2nd BCT). CPT Keay will testify that he believed PFC Manning was good

at his job and he was also impressed with PFC Manning's computer skills. Despite this belief, CPT Key will testify that PFC Manning should not have been a soldier as he seemed to act immature. CPT Key will testify that you could not demand things from PFC Manning as he had a soft skin and was not receptive to commands. CPT Key will testify that there was a lack of leadership on the night shift which PFC Manning worked on. CPT Key will testify that from his perspective PFC Manning wanted to be a good soldier, but naturally was not good at the basic soldier skills.

- 30) CPT Michael E. Worsley, 1835th Medical Detachment (CSC), 13137 E. 23rd Ave, Aurora, Colorado 80045, (602) 748-7691, michael.worsley@us.army.mil. CPT Worsley will testify that he treated PFC Manning on numerous between 30 December 2009 and 26 May 2010. As part of his treatment, CPT Worsley will testify that he considered letters written by PFC Manning's noncommissioned officer in charge, then MSG Adkins. CPT Worsley will testify that SFC Adkins expressed concern about PFC Manning's mental and emotional stability in the three letters noting that PFC Manning appeared to be suffering greatly and also having difficulty sharing his problem. CPT Worsley will testify that he contacted SFC Adkins after each evaluation was completed in order to give him a summary of the information from his review and to allow SFC Adkins to share his thoughts and concerns. Despite the behavior of PFC Manning, CPT Worsley will testify that he never made a recommendation to the command concerning whether to suspend PFC Manning's security clearance. CPT Worsley will testify that he did, however, speak with MAJ Clausen and ISG Eric Usbeck about his reviews and PFC Manning's need for ongoing long term psychotherapy to explore and understand his issues.
- 31) CPT Elizabeth A. Fields, USA ROTC Battalion, Illinois State University, Normal, Illinois 61761, (630) 615-8101, elizabeth.fields1@us.army.mil. as the Special Security Representative (SSR) for the T-SCIF and part of the Sunni Team. CPT Fields will testify that she only received one hour of training at 10th MTN to be the SSR for the T-SCIF. CPT Fields will testify that her training covered the basic rules and regulations for a SCIF at Fort Drum. CPT Fields will testify that her training did not really cover ensuring the security of a T-SCIF. However, she will testify that she was only the SSR at Fort Drum. When her unit deployed to Iraq, CPT Fields will testify that then MSG Adkins was the one that worked the security of the T-SCIF and she dealt with security clearances. CPT Fields will testify that SFC Adkins did not receive any training to be the SSR. CPT Fields will testify that SFC Adkins just assumed the position under the approval of the S-2, MAJ Clausen. CPT Fields will testify that she believed SFC Adkins provided terrible supervisory leadership. She thought he was a terrible leader because the problems within the unit were constantly being ignored. CPT Fields will testify that it was obvious to everyone that PFC Manning was struggling with mental and emotional issues. CPT Fields will testify that when she tried to deal with the issue and get PFC Manning help, she was told that it was an NCO problem and to stay out of it by SFC Adkins. CPT Fields will testify that she did not believe that MAJ Clausen had any type of management over the section. CPT Fields will also testify that she did not believe that the Company 1SG

cared about the S2 section because they were not co-located. CPT Fields will testify that she was aware of multiple issues with PFC Manning, but stated that PFC Manning stayed in the T-SCIF because SFC Adkins said that the unit needed personnel. CPT Fields will testify that she believed that there was a lack of leadership across the board. CPT Fields will testify that as leaders they should have pushed harder from the NCOs to the Officers. CPT Fields will testify that she was puzzled why PFC Manning was not removed from the T-SCIF after previous incidents that occurred between him and SPC Padgett in December of 2009. CPT Fields will testify that it was simply accepted that people brought in CDs and DVDs into the T-SCIF. CPT Fields believed that there was no unit training at 2/10 that focused on T-SCIF operations during the deployment.

- 32) 1LT Tanya Marie Gaab, HHC, 525th BFSB, Fort Bragg, North Carolina (910) 396-5266, tanya.gaab@us.army.mil. 1LT Gaab will testify that SFC Adkins was in charge of the administrative details and supervision of the soldiers within the S2 Section. 1LT Gaab will testify that she was made aware of many of the issues surrounding PFC Manning when she arrived to the unit. 1LT Gaab will testify that PFC Manning should have been removed from his position in the T-SCIF early on in the deployment. 1LT Gaab will testify that she felt that the leadership within the S2 section was not really concerned with disciplining soldiers. 1LT Gaab will testify that she asked SFC Adkins why PFC Manning was not removed from his position in the T-SCIF earlier, and that he told her that it was a manpower issue. 1LT Gaab will testify that she believes that PFC Manning's issues were not taken seriously and no one took any steps to help him or even recognize that he needed help. 1LT Gaab will testify that she believes the unit failed to take proper action and failed to properly respond to the issues that PFC Manning was obviously struggling with both before and during the deployment.
- 33) CW2 Joshua D. Ehresman, HSC, HHBN 2d ID, Camp Red Cloud, Korea APO AP 96258, 001-82-505-732-7619, joshua.d.ehresman@us.army.mil. CW2 Ehresman will testify that he was told by SFC Adkins and MAJ Clausen that he was not responsible for any personnel who worked in the S2 section. CW2 Ehresman will testify that on several occasions he returned to SFC Adkins and MAJ Clausen to clarify their expectations about his responsibilities regarding enlisted soldiers and officers and his non-role in soldier leadership was reinforced on each occasion. CW2 Ehresman will testify that he was aware of multiple emotional outbursts by PFC Manning. CW2 Ehresman will testify that prior to the deployment he recommended that PFC Manning should not deploy and expressed this directly to MAJ Clausen, CPT Martin and SFC Adkins. CW2 Ehresman will testify that he was told that PFC Manning would deploy due to manpower issues. CW2 Ehresman will testify that he witnessed an incident in December of 2009 by PFC Manning that required him to physically involve himself in the situation in order to ensure PFC Manning did not try to harm himself or others. After this emotional outburst, CW2 Ehresman will testify that he spoke to SFC Adkins and recommended that he take the bolt from PFC Manning's weapon, send him to mental health and then get him out of the Army. CW2

Ehresman will testify that he also spoke with CPT Lim, CPT Martin and 1SG Eric Usbeck about his concerns after the outburst by PFC Manning. CW2 Ehresman will testify that even after expressing these concerns, nothing was done.

- 34) WO1 Kyle J. Balonek, HHBN, G2, 10th Mountain Division, Fort Drum, New York 13602, (315) 775-7203, kyle.balonek@us.army.mil. WO1 Balonek will testify that he felt PFC Manning was very good at pulling data from various systems and using various computer programs to produce products from the data. WO1 Balonek will testify that he went to SFC Adkins about PFC Manning's behavior prior to the deployment, but SFC Adkins told him not to worry about it. WO1 Balonek will testify that SFC Adkins would keep things from him sometimes regarding the welfare and supervision of soldiers. WO1 Balonek will testify that he believed that SFC Adkins would pull things to his level and prevent him or others from having any input on how to handle enlisted soldier issues. WO1 Balonek will testify that he believed that this was odd and he talked to SFC Adkins on a couple of occasions about the poor chain of command and leadership, but that he was always told by SFC Adkins that it was not his concern.
- 35) SFC Paul David Adkins, HHC, 2nd BCT, Fort Drum, New York 13602, DSN 772-8260, paul.david.adkins@us.army.mil. SFC Adkins will testify that he was PFC Manning's NCOIC. Once a MSG, SFC Adkins will testify that he was administratively reduced by a board due to being derelict in his duties in taking corrective action with PFC Manning both prior to and during the deployment. SFC Adkins will testify that the reduction board concluded that SFC Adkins failed to take proper steps in addressing PFC Manning's issues. SFC Adkins will testify that he was aware of the problems of PFC Manning. SFC Adkins will testify that over the course of several months, he drafted three memorandums detailing various behavioral health concerns of PFC Manning. Despite this knowledge, SFC Adkins will testify that he failed to notify anyone in his chain of command of these concerns over PFC Manning. Instead, SFC Adkins will testify that he simply allowed PFC Manning to continue to work in the T-SCIF as an intelligence analyst. SFC Adkins will testify that he assessed that PFC Manning was salvageable if he received and actively participated in extensive psychological therapy (1-2 times a week on an indefinite basis) coupled with responsive psychiatric evaluations, medication and follow-up adjustments on dosages.
- 36) SGT Lawrence Wayne Mitchell, HHC, 2nd BCT, Fort Drum, New York 13602, (315) 783-3805, lawrence.mitchell2@us.army.mil. SGT Mitchell will testify that he originally did not have supervisory responsibilities at his unit. SGT Mitchell will testify that after approximately 60 days, he was given responsibility for supervising two subordinate 35F soldiers. SGT Mitchell will testify that one of these soldiers was PFC Manning. SGT Mitchell will testify that when he got to the unit in May of 2009, he observed operations for approximately 90 days and then approached SFC Adkins to let him know his input about operations. SGT Mitchell will testify that he specifically told SFC Adkins that PFC Manning needed to be chaptered out of the

Army. SGT Mitchell believed that PFC Manning clearly was struggling with emotional issues that made him ill-suited for military service. SGT Mitchell will testify that this conversation occurred in June or July of 2009. SGT Mitchell will testify that he approached SFC Adkins monthly thereafter about separating PFC Manning from the Army but was aware that he could only take the issue to his supervisor so many times before it bordered on being disrespectful to his supervisor's leadership. SGT Mitchell will testify he knew PFC Manning was suffering from extreme emotional issues. During the deployment, SGT Mitchell will testify that he found PFC Manning curled in the fetal position in the Brigade conference room, rocking himself back and forth. SGT Mitchell will testify that he was appointed as a Special Security Representative (SSR) on orders for the T-SCIF. SGT Mitchell will testify that the responsibilities for the SSR included reviewing security clearance requests, initiating DEROGs recommending security clearances for personnel in the S2 shop, producing an SOP and SCIF security. While he was appointed as a SSR, SGT Mitchell will testify that he did not conduct those duties. SGT Mitchell will testify that he believes the reason PFC Manning was allowed to remain in the military and did not receive the help that he needed to deal with his issues was because SFC Adkins had influence over every action taken on personnel in the S2 section and it was his decision not to do anything.

- 37) SGT Rebecca M. Schwab, AFN Bavaria, CMR 411, Box 6497, APO, AE 09112, DSN 476-3172, rebecca.schwab@us.army.mil. SGT Schwab will testify that she has known PFC Manning since 2008. In the 2008 time frame, SGT Schwab will testify that PFC Manning told her that he was gay. SGT Schwab will testify that she believes that it was a huge issue for him and that PFC Manning could not be true to himself without the risk of losing his job. SGT Schwab will testify that she believed that PFC Manning felt like he had no one to talk to and that this was why he was confiding in her. SGT Schwab will testify that she believes that PFC Manning was very intelligent and knew a lot about the foreign policy issues. SGT Schwab will testify that she feels that PFC Manning had numerous emotional issues and that these emotional issues made it difficult for him to adjust to the military life.
- 38) SGT Chad Madaras, HHC, 2-14 IN, 2BCT, 10th MTN DIV, Fort Drum, New York, 13602, (315) 404-6275, chad.madaras@us.army.mil. SGT Madaras will testify that while in Iraq, he worked as an analyst on the day shift and PFC Manning worked as an analyst on the night shift. SGT Madaras will testify that the day shift had NCO supervision. SGT Madaras will testify that the night shift did not have NCO supervision. SGT Madaras will testify that SFC Adkins allowed E-4s to be in charge of the night shift. SGT Madaras will testify that during the deployment he witnessed several emotional outbursts by PFC Manning. SGT Madaras will testify that despite PFC Manning's emotional outbursts, that his NCOIC, SFC Adkins, did not counsel him for disrespect, did not initiate UCMJ action, and did not remove PFC Manning from the T-SCIF due to his actions. SGT Madaras will testify that PFC Manning did not seem to have any friends in the unit. SGT Madaras will testify that PFC Manning seemed to be an outcast in his unit.

39) SGT Daniel W. Padgett, Army Counter Intel, 1055 Sheridan Drive, Building 428, Fort Leavenworth, Kansas 66027, (913) 684-7872, daniel.padgett1@us.army.mil, former supervisor of PFC Manning. SGT Padgett will testify that during the deployment he was a Specialist. SGT Padgett will testify that PFC Manning was a very good analyst, who was good with computers but timid and not good at public speaking. SGT Padgett will testify that he was assigned as the night shift NCOIC with then SPC Manning and SPC Cooley. SGT Padgett will testify that he was assigned this position even though he had not yet been to any leadership schools. SGT Padgett will testify that there really was not anyone supervising the night shift. SGT Padgett will also testify that when he needed to counsel PFC Manning he went to SSG Balonek and asked him if he could counsel him. SGT Padgett will testify that he was given permission to handle disciplinary actions for PFC Manning by SFC Adkins and SSG Balonek. SGT Padgett will testify that he believed that he was in essence taking care of other NCOs soldiers and that PFC Manning should have been counseled by SSG Balonek. SGT Padgett will testify that during one counseling session in December of 2009, PFC Manning grabbed the table and flipped it. SGT Padgett will testify that PFC Manning did not approach him, but he was concerned when PFC Manning stepped towards the weapons rack. SGT Padgett will testify that when PFC Manning stepped towards the weapons rack, CW2 Ehresman grabbed PFC Manning from behind and held him until he calmed down. SGT Padgett will testify that although PFC Manning later apologized to him, that he believes PFC Manning should have been removed from the T-SCIF after the incident.

40) SGT Lorena Cooley, HHC, 210 BSB, 10220 N. Riva Ridge Loop, Fort Drum, New York, 13602, (315) 772-2383. SGT Cooley will testify that she believes that PFC Manning was picked on by others because they assumed that he was gay. SGT Cooley will testify that SFC Adkins minimized a lot of things with PFC Manning by not taking any corrective action when PFC Manning had his emotional outbursts. SGT Cooley will testify that SFC Adkins tried to keep things within the shop instead of informing the company commander of any issues with PFC Manning. SGT Cooley will testify that PFC Manning should have probably gotten help before they deployed and that he should have been removed from the T-SCIF.

41) SGT Sheri M. Walsh, 13208 Burnes Lake Drive, Tampa, Florida 33612, (813) 988-6315, sheri.walsh@us.army.mil. SGT Walsh will testify that PFC Manning had conversations with her about relationship issues and the fact he was having gender identity issues. SGT Walsh will testify that PFC Manning spoke to her often about wanting to get an Honorable Discharge so that he could keep his Top Secret Clearance after his release from the Army. SGT Walsh will testify that she noticed that very few people would talk to PFC Manning. SGT Walsh will testify that every time that she saw PFC Manning, he was by himself. SGT Walsh will testify that others would make fun of PFC Manning's size and make fun of him. SGT Walsh will testify that others also assumed that he was gay and made fun of him. SGT Walsh will testify that she saw two soldiers push a door back into PFC Manning's face when

PFC Manning was coming out of his room. SGT Walsh will testify that PFC Manning was obviously upset and embarrassed about having the door pushed back into his face. SGT Walsh will testify that instead of complaining about the conduct, PFC Manning simply said that he walked into the door by accident. SGT Walsh will testify that she believes PFC Manning was at a very confusing time in his life. SGT Walsh does not believe that the Army was a good fit for him based upon where he was at in his life.

- 42) Ambassador Peter Galbraith, P.O. Box 335, Townshend, Vermont 05353, 802 365 7633. Ambassador Galbraith will testify that he is not a supporter of PFC Manning. He will also testify that he does not support PFC Manning's alleged conduct. He will testify that the release of the SIPDIS cables caused embarrassment to the Government and significant financial damage to the United States due to either having to remove an ambassador from a specific country or by having to address the release of the SIPDIS cables with affected countries. Ambassador Galbraith will testify that, while SIPDIS cables were among the least sensitive of the government's documents, the cumulative effect of the release of so many cables could have harmed the national security interest of the United States. Ambassador Galbraith will testify that even though he does not support the release of the SIPDIS cables, he also does not believe that the SIPDIS cables contained our country's closely held secrets. Instead, he will testify that these types of cables were available to anyone with SIPRNET access – a potential audience of over a million people. Ambassador Galbraith will testify that cables included in the SIPRNET system were written for a relatively wide distribution, and thus were included into a database available to anyone with SIPRNET access. Ambassador Galbraith will testify that no prudent diplomat would include genuinely sensitive material in a cable with such a broad distribution. Ambassador Galbraith will testify that most of the cables that were intended for SIPDIS often reported on widely known issues and events and many dealt with routine administrative matters. While a cable in the SIPRNET system appears to be signed by an Ambassador and addressed to the Secretary of State, the cables were rarely drafted by an Ambassador, usually not cleared by an Ambassador if they dealt with routine administrative matters, and almost never read by the Secretary of State. As such, Ambassador Galbraith will testify that much of what would be in a SIPDIS cable could also be found in the newspapers of the relevant country or in other open source reporting. Ambassador Galbraith will testify that ambassadors use more restrictive channels (such as NODIS, EXDIS, LIMDIS, and intelligence channels) for discussion of sensitive material. Ambassador Galbraith will testify that no responsible ambassador would use a channel with such broad distribution for matters—be it intelligence, military, or policy recommendations—where the leak of the information could seriously damage the interests of the United States. Ambassador Galbraith will also testify that it would be irresponsible to cite specific interlocutors in a SIPDIS where the person could be harmed by the leak of her or his name, although he understands such information may have unwisely or negligently been included in cables sent in the SIPDIS channel. Ambassador Galbraith will testify that although he has not reviewed all of the released SIPDIS cables, diplomats

working for him when he was an Ambassador wrote some of the cables now released and that he edited and cleared cables dealing with substantive matters. While the SIPDIS distribution did not exist when Galbraith was Ambassador to Croatia, Ambassador Galbraith will testify that he authorized the sending of cables with broad distribution only when he judged there was a benefit to a larger audience having access to the information and when the consequences of a leak were not serious. Ambassador Galbraith will testify that he was—and is—very concerned about the propensity of some in the U.S. Government to leak classified information. While he was Ambassador, someone on Capitol Hill leaked a report containing sensitive intelligence that compromised an ongoing intelligence operation in Croatia and put at risk embassy personnel. Ambassador Galbraith pushed hard for the investigation and punishment of those responsible. While Ambassador Galbraith will testify that he strongly disapproves of what PFC Manning allegedly did, he will also testify that there is no comparison in the sensitivity and importance of the material allegedly released by PFC Manning and real intelligence leaks where there has often been no investigation or only limited punishment. Ambassador Galbraith will testify that, in his experience, many—if not most—state department cables are over classified and that a secret classification does not mean the information is genuinely secret. Ambassador Galbraith will testify that, in his opinion, it would be irresponsible to use the SIPDIS distribution for cables that contained genuinely secret information and that he believes many of the cables classified secret in the SIPRNET system should not have been.

- 43) Ms. Jihreah W. Showman, Hope Mills, North Carolina, 28348, (918) 935-4185. Ms. Showman will testify about being aware of PFC Manning's emotional issues. Ms. Showman will testify that she went to SFC Adkins and recommended that PFC Manning not deploy due to his emotional issues. Ms. Showman will testify that when she was PFC Manning direct supervisor she witnessed multiple instances both before and during the deployment that indicated to her that PFC Manning was struggling both emotionally and mentally.
- 44) Ms. Lillian Smith, US Army HQDA, ITA EM, (703) 697-5869, lillian.c.smith4civ@mail.mil. Ms. Smith will testify as an expert for the defense in information assurance practices. Ms. Smith will testify that based upon the Secretary of Army's 15-6 investigation and her review of the CID file, PFC Manning's unit failed to follow even the most basic information assurance requirements. Ms. Smith will testify that the unit failed to take required action to DEROG PFC Manning after he first exhibited emotional problems. Ms. Smith will testify that the unit similarly failed to take required action after PFC Manning's subsequent emotional outbursts, odd behavior, and admitted gender identity disorder. Ms. Smith will testify that had the unit followed established information assurance practices, PFC Manning would not have been in the position to have compromised the charged information.
- 45) COL Dick Larry. HQDA, G3/5/7, 400 Army Pentagon, Washington D.C., 20310, (703) 697-4916, dick.larry@us.army.mil. COL Larry will be called only to rebut any

argument by the Government that the charged SIGACTS revealed to the enemy our counter- Improvised Explosive Device Defeat (IEDD) training, tactics, and procedures (TTPs). COL Larry will testify that his office is the Army representative to the Joint Intelligence Explosive Ordnance Disposal (EOD) Organization. COL Larry will testify that his organization has the following sub-tasks: (1) publish and maintain the Army CID OPSEC manual, (2) sustain funding for theater operations, (3) manage Army EOD, (4) Army staff lead for weapons technical knowledge, and (5) represent the Army at the Warfighter Senior Integration Group. COL Larry will testify that his organization uses intelligence information gathered from Army G2, DIA, unit operation/intelligence summaries, and any intelligence gathered by Provincial Reconstruction Teams. COL Larry will testify that intelligence gleaned from the charged SIGACTS would be limited by two general problems (1) there is limited information in a SIGACT (could be just a picture with the 5 Ws (who, what, where, when, and why) and (2) the information contained in the report may well be inaccurate. COL Larry will testify that other factors weigh heavily in the enemy's ability to be successful with IEDs. COL Larry will testify those factors include the availability of material, the ability to communicate from bomb-makers down to the bomb-emplacers, the IED countermeasures used locally by BLUEFOR, and the consequent measures used by the IED to defeat the countermeasures. COL Larry will testify the threat does not have the administrative concerns that we do. COL Larry will testify that the enemy can immediately make changes based on the operational environment. COL Larry will testify that the threat is constantly adapting. COL Larry will testify that BLUEFOR has to think three moves ahead, and has to constantly examine how the actions on the ground impact our response. As such, COL Larry will testify that what may have been true two years, two months, or even two weeks ago may not be true today. COL Larry will testify that he does not view the charged SIGACTS as providing sensitive counter IED measures to the enemy.

- 46) Debra Van Alstyne, 240-994-1399, debva623@gmail.com. Ms. Van Alstyne is PFC Manning's aunt. Ms. Van Alstyne will testify about PFC Manning's childhood and the difficulty that he experienced due to his parent's substance abuse problems. Ms. Van Alstyne will testify about how PFC Manning came to live with her shortly before he joined the Army. Ms. Van Alstyne will testify about how proud PFC Manning was to join the Army and how important that he felt his job was to his country. Finally, Ms. Van Alstyne will testify about PFC Manning's rehabilitative potential in society.

2. The Defense reserves the right to supplement this witness list with additional witnesses. Any supplemental witness list will be filed in a timely manner and based upon either a filing by the Government of additional witnesses or the discovery of additional information relevant to either merits or sentencing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David E. Coombs', with a stylized flourish at the end.

DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES OF AMERICA

v.

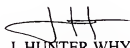
Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Disclosure of
RCM 914 Material

15 October 2012

On 22 June 2012, the United States submitted its initial Witness List in the above referenced court-martial. *See* Appellate Exhibit (AE) CLXII. The current Case Calendar requires the prosecution to disclose any material discoverable under Rule for Courts-Martial (RCM) 914 by 15 October 2012. *See* RCM 914. On 3 August 2012 and in response to the Court's email dated 26 July 2012, the United States notified the defense of what types of statements the prosecution intended to disclose to the defense under RCM 914. *See* AE CCLXX. The defense did not object.

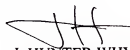
On 15 October 2012, the United States disclosed to the defense or made available for inspection all material discoverable under RCM 914 for those government witnesses identified in Appellate Exhibit CLXII. *See* Enclosures 1-2. The United States acknowledges its ongoing obligation to disclose additional information that it discovers.


J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

2 Enclosures

1. Classified RCM 914 Material (classified "SECRET") [not attached]
2. Unclassified RCM 914 Material ("FOUO") [not attached]

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 15 October 2012.


J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

APPELLATE EXHIBIT 345
PAGE REFERENCED: _____
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UNITED STATES OF AMERICA)

v.)

Prosecution Disclosure of
Giglio Material)

Manning, Bradley E.)

PFC, U.S. Army,)

HHC, U.S. Army Garrison,)

Joint Base Myer-Henderson Hall)

Fort Myer, Virginia 22211)

15 October 2012

On 22 June 2012, the United States submitted its initial Witness List in the above referenced court-martial. See Appellate Exhibit (AE) CLXII. On 14 August 2012 and 4 September 2012, the United States submitted its Witness Lists regarding Article 13, Uniform Code of Military Justice (UCMJ). See Appellate Exhibit CCXXXIX. Beginning in July 2012, the United States began requesting any impeachment materials for witnesses not being offered purely for authentication purposes. The United States requested that the departments, agencies, organizations, and military commands, to which the government witnesses are employed or assigned, conduct a thorough and comprehensive search of their own records for impeachment material and disclose any responsive records. See enclosed sample *Giglio* request; see also *Giglio v. United States*, 405 U.S. 150 (1972).

As of 15 October 2012, the United States has reviewed its own files and records received in response to its requests. In addition to prior disclosures, the United States discloses the following and makes available for inspection all discoverable material:

1. CDR Youssef Aboul-Enein. The prosecution did not find any such material relating to this witness.
2. SFC Paul Adkins. In addition to disclosure(s) already provided, any material relating to this witness is available for inspection with the prosecution.
3. Ms. Sara Loving. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
4. Ms. Lisa Alleman. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
5. SPC Mary Amiatu. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
6. SPC Kyra Amos. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

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7. SFC Jose Anica. Any material relating to this witness is available for inspection with the prosecution.
8. Mr. Peter Artale. Any material relating to this witness is available for inspection with the prosecution.
9. SPC Eric Baker. The prosecution did not find any such material relating to this witness.
10. SPC Kimberly Bales. The prosecution did not find any such material relating to this witness.
11. WO1 Kyle Balonek. The prosecution did not find any such material relating to this witness.
12. CW4 Anthony Barnett. The prosecution did not find any such material relating to this witness.
13. Mr. Joseph Benthall. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
14. SA Troy Bettencourt. The prosecution did not find any such material relating to this witness.
15. SSG Peter Bigelow. Any material relating to this witness is available for inspection with the prosecution.
16. Mr. Wyatt Bora. The prosecution did not find any such material relating to this witness.
17. SA John Bowen. The prosecution did not find any such material relating to this witness.
18. Mr. Steve Buchanan. The prosecution did not find any such material relating to this witness.
19. BG (Ret.) Robert Carr. The prosecution did not find any such material relating to this witness.
20. Mr. Sean Chamberlin. The prosecution did not find any such material relating to this witness.
21. CPT Thomas Cherepko. The prosecution did not find any such material relating to this witness.
22. SA Charles Clapper. The prosecution did not find any such material relating to this witness.
23. Dr. Michael Collins. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

24. Mr. Domingo U. Conlu. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
25. SGT Lorena Cooley. The prosecution did not find any such material relating to this witness.
26. Ms. Elizabeth Dibble. The prosecution did not find any such material relating to this witness.
27. Mr. Vann Van Diepen. The prosecution did not find any such material relating to this witness.
28. Mr. Jim Downey. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
29. SA Jeremy Drews. The prosecution did not find any such material relating to this witness.
30. SA Antonio Edwards. The prosecution did not find any such material relating to this witness.
31. SA Kirk Ellis. The prosecution did not find any such material relating to this witness.
32. Mr. John Feeley. The prosecution did not find any such material relating to this witness.
33. Mr. Ryan Fidler. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
34. CPT Matthew Freeburg. Any material relating to this witness is available for inspection with the prosecution.
35. CPT Casey Fulton. The prosecution did not find any such material relating to this witness.
36. Mr. James Fung. The prosecution did not find any such material relating to this witness.
37. Ms. Shelia Glenn. The prosecution did not find any such material relating to this witness.
38. Mr. Mike Goldman. The prosecution did not find any such material relating to this witness.
39. SA Toni Graham. The prosecution did not find any such material relating to this witness.
40. Mr. Jacob Grant. The prosecution did not find any such material relating to this witness.
41. Mr. Bert Haggett. The prosecution did not find any such material relating to this witness.
42. VADM Robert Harward. The prosecution did not find any such material relating to this witness.

43. Mr. Patrick Hoeffel. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
44. Mr. Matthew Hosburgh. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
45. LT (US Navy) Thomas Hoskins. The prosecution did not find any such material relating to this witness.
46. Ms. Tina Huffman. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
47. Mr. George Huley. The prosecution did not find any such material relating to this witness.
48. SA Susy Hwang. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
49. Ms. Elisa K. (Rubin) Ivory. The prosecution did not find any such material relating to this witness.
50. Mr. Albert J. Janek. The prosecution did not find any such material relating to this witness.
51. Mr. Glen Johnson. The prosecution did not find any such material relating to this witness.
52. SA Mark Johnson. The prosecution did not find any such material relating to this witness.
53. AMB Patrick F. Kennedy. The prosecution did not find any such material relating to this witness.
54. SA Kenneth King. The prosecution did not find any such material relating to this witness.
55. Mr. John Kirchoffer. The prosecution did not find any such material relating to this witness.
56. AMB Michael Kozak. The prosecution did not find any such material relating to this witness.
57. Mr. Adrian Lamo. In addition to disclosure(s) already provided, any material relating to this witness is available for inspection with the prosecution.
58. CW5 Jon Larue. The prosecution did not find any such material relating to this witness.
59. Mr. Danny J. Lewis. The prosecution did not find any such material relating to this witness.

60. CPT Steven Lim. Any material relating to this witness is available for inspection with the prosecution.
61. SA Jennie Lisciaandri. The prosecution did not find any such material relating to this witness.
62. SGT Chad Madaras. The prosecution did not find any such material relating to this witness.
63. Mr. Brian Madrid. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
64. Ms. Tamara Mairena. The prosecution did not find any such material relating to this witness.
65. SA Mark Mander. Any material relating to this witness is available for inspection with the prosecution.
66. SGT Alejandro Marin. The prosecution did not find any such material relating to this witness.
67. Mr. Randy Marks. The prosecution did not find any such material relating to this witness.
68. Mr. James McCarl. The prosecution did not find any such material relating to this witness.
69. Mr. Vince McCarron. The prosecution did not find any such material relating to this witness.
70. Mr. Brian Mcfall. The prosecution did not find any such material relating to this witness.
71. Mr. James McManus. The prosecution did not find any such material relating to this witness.
72. COL David Miller. The prosecution did not find any such material relating to this witness.
73. Mr. Jason Milliman. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
74. Mr. James Moore. The prosecution did not find any such material relating to this witness.
75. Mr. Ken Moser. The prosecution did not find any such material relating to this witness.
76. Mr. Jeffery Motes. The prosecution did not find any such material relating to this witness.
77. Mr. Troy Moull. The prosecution did not find any such material relating to this witness.
78. Mr. Kin Moy. The prosecution did not find any such material relating to this witness.

79. Mr. Jonathan Muldoon. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
80. Mr. Nicholas Murphy. Any material relating to this witness is available for inspection with the prosecution.
81. Lt Col (R) Martin Nehring. The prosecution did not find any such material relating to this witness.
82. MAJ Katherine Ogletree. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
83. SGT Daniel Padgett. The prosecution did not find any such material relating to this witness.
84. AMB David Pearce. The prosecution did not find any such material relating to this witness.
85. Mr. H. Dean Pittman. The prosecution did not find any such material relating to this witness.
86. Lt Col Robert Pope. The prosecution did not find any such material relating to this witness.
87. SSG Adam Price. The prosecution did not find any such material relating to this witness.
88. SA Calder Robertson. The prosecution did not find any such material relating to this witness.
89. LTC Rodney Roberts. The prosecution did not find any such material relating to this witness.
90. Ms. Theresa Robinson. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
91. SA Ronald Rock. The prosecution did not find any such material relating to this witness.
92. CW4 Armond Rouillard. The prosecution did not find any such material relating to this witness.
93. SGT David Sadtler. Any material relating to this witness is available for inspection with the prosecution.
94. Mr. Doug Schasteen. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any

impeachment material be found, the prosecution immediately will make such material available for inspection.

95. Ms. Jacqueline Scott. The prosecution did not find any such material relating to this witness.

96. AMB Stephen Seche. The prosecution did not find any such material relating to this witness.

97. SAC David Shaver. The prosecution did not find any such material relating to this witness.

98. Ms. Jihleah Showman. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

99. SA Thomas Smith. The prosecution did not find any such material relating to this witness.

100. SA Mitchell Song. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

101. CPT Loren Stark. Any material relating to this witness is available for inspection with the prosecution.

102. Mr. Ralph Steinway. The prosecution did not find any such material relating to this witness.

103. SA George Street. The prosecution did not find any such material relating to this witness.

104. Ms. Cathryn Strobl. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

105. Ms. Susan Swart. The prosecution did not find any such material relating to this witness.

106. Ms. Tasha Thian. The prosecution did not find any such material relating to this witness.

107. SSG Robert Thomas, III. The prosecution did not find any such material relating to this witness.

108. Mr. Louis Travieso. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.

109. Mr. Charles Vankleek. The prosecution did not find any such material relating to this witness.
110. Ms. Shari Villarosa. The prosecution did not find any such material relating to this witness.
111. SFC Garrith Walker. Any material relating to this witness is available for inspection with the prosecution.
112. Mr. Greg Weaver. The prosecution did not find any such material relating to this witness.
113. Ms. Florinda White. The prosecution will coordinate with the particular department, agency, organization, or military command for any impeachment material. Should any impeachment material be found, the prosecution immediately will make such material available for inspection.
114. SA John Wilbur. The prosecution did not find any such material relating to this witness.
115. SA Alfred Williamson. The prosecution did not find any such material relating to this witness.
116. Mr. Charlie Wisecarver. The prosecution did not find any such material relating to this witness.
117. Mr. Alex Withers. The prosecution did not find any such material relating to this witness.
118. RDML David Woods. The prosecution did not find any such material relating to this witness.
119. AMB Don Yamamoto. The prosecution did not find any such material relating to this witness.
120. SA Garon Young. Any material relating to this witness is available for inspection with the prosecution.
121. Mr. Joseph Yun. The prosecution did not find any such material relating to this witness.

Article 13 Witnesses:

122. CWO4 James Averhart. Any material relating to this witness is available for inspection with the prosecution.
123. CWO2 Denise Barnes. The prosecution did not find any such material relating to this witness.
124. MSgt Craig Blenis. The prosecution did not find any such material relating to this witness.

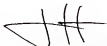
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125. CPT Joseph Casamatta. The prosecution did not find any such material relating to this witness.
126. Col (R) Daniel Choike. The prosecution did not find any such material relating to this witness.
127. LCpl Jonathan Cline. The prosecution did not find any such material relating to this witness.
128. COL Carl Coffman. The prosecution did not find any such material relating to this witness.
129. GySgt William Fuller. The prosecution did not find any such material relating to this witness.
130. CWO5 Abel Galaviz. The prosecution did not find any such material relating to this witness.
131. SSG Ryan Jordan. The prosecution did not find any such material relating to this witness.
132. MSgt Brian Papakie. The prosecution did not find any such material relating to this witness.
133. CAPT (R) Jonathan Richardson. The prosecution did not find any such material relating to this witness.
134. LTC Robert Russell. The prosecution did not find any such material relating to this witness.
135. Mr. Joshua Tankersly. The prosecution did not find any such material relating to this witness.
136. GMI Terrance Webb. The prosecution did not find any such material relating to this witness.
137. LCDR Eve Weber. The prosecution did not find any such material relating to this witness.
138. ISG Bruce Williams. The prosecution did not find any such material relating to this witness.
139. Maj Timothy Zelek. Any material relating to this witness is available for inspection with the prosecution.

The United States acknowledges its continuing obligation to make available additional impeachment information if it is discovered.

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The United States will request impeachment material for its Article 10 witnesses and make any responsive material available for inspection.



J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

Enclosure

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 15 October 2012.



J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

Appellate Exhibit 347

1 page

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 348

1 page

classified

"SECRET"

ordered sealed for Reason 2

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

UNITED STATES OF AMERICA

v.

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PFC, U.S. Army,
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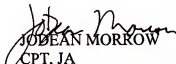
NOTICE AND DISCLOSURE
TO DEFENSE

17 October 2012

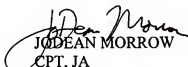
Pursuant to the Court's order during an *ex parte* session on 12 October 2012, the United States discloses the following information from the Federal Bureau of Investigation investigative file. The information is contained in a document dated 11/4/2010 [5:00 P.M.].

"(U//LES) WFO, CD-4A, Army CID, EDVA, and CES met with representatives from the Office of the National Counterintelligence Executive (NCIX), Director of National Intelligence (DNI), to coordinate activities. NCIX leadership provided a briefing re NCIX's role in the wake of the leak of classified information by WikiLeaks, as well as its role with respect to the potential leak of additional classified information in the future. NCIX is aware and sensitive to discovery issues and advised that the NCIX will not generate any type of official evaluation or damage assessment until after the completion of any potential criminal prosecutions."

The United States will produce this information in discovery at a later date.


JODEAN MORROW
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David E. Coombs, Civilian Defense Counsel, on 17 October 2012.


JODEAN MORROW
CPT, JA
Assistant Trial Counsel

APPELLATE EXHIBIT 349
PAGE REFERENCED: _____
PAGE 1 OF 1 PAGES

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Prosecution Disclosure
to the Defense

Speedy Trial Chronology

16 October 2012

Pursuant to Rule 3.2, Rules of Practice before Army Courts-Martial 2012, the prosecution discloses the below chronology of dates and events for the above-captioned court-martial. On 26 September 2012, the prosecution submitted a more detailed chronology to the defense which accounted for the below events, in addition to the actions of the prosecution in bringing the accused to trial. On 27 September 2012, the defense objected to the detailed chronology for lack of specificity. The chronology is an abbreviated chronology of only those dates for major events for which the defense has actual knowledge existed to facilitate a stipulated chronology.

Stipulate (Y/N)	Date	Event
	18-Feb-10	WikiLeaks released purported classified Department of State cable that is the subject of Specification 14 of Charge II
	15-Mar-10	WikiLeaks released purported classified document that is the subject of Specification 15 of Charge II
	5-Apr-10	WikiLeaks released purported video that is the subject of Specification 2 of Charge II
	25-May-10	Adrian Lamo reported to the United States Government that the accused admitted disclosing classified documents to WikiLeaks
	27-May-10	Accused confined in CHU with armed guard
	29-May-10	Accused ordered into pretrial confinement
	30-May-10	Military Magistrate approved pretrial confinement
	31-May-10	Accused transferred to Theater Field Confinement Facility in Kuwait
	5-Jul-10	Original Charges preferred
	6-Jul-10	SPCMCA appointed LTC Craig Merutka as the Article 32 Investigating Officer
	11-Jul-10	Article 32 Investigating Officer denied defense's request for an RCM 706 board
	11-Jul-10	Defense request RCM 706 board and delay of Article 32 investigation
	12-Jul-10	Defense requested delay of Article 32 investigation until RCM 706 board completed and until the accused could resolve issues relating to civilian defense counsel and defense expert witnesses
	12-Jul-10	SPCMCA granted defense request to delay Article 32 investigation
	13-Jul-10	Defense requested for appointment of expert in computer forensics
	23-Jul-10	SPCMCA granted defense request for expert in computer forensics

APPELLATE EXHIBIT 35d

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	25-Jul-10	Prosecution produced CID case file
	25-Jul-10	WikiLeaks released purported CIDNE Afghanistan database
	28-Jul-10	GCMCA requested transfer of jurisdiction to MDW
	28-Jul-10	GCMCA signed Protective Order Governing Classified Information
	29-Jul-10	Accused arrived at Quantico
	2-Aug-10	GCMCA released jurisdiction to SPCMCA
	2-Aug-10	SPCMCA ordered Article 32 investigation
	3-Aug-10	SPCMCA ordered RCM 706 board
	4-Aug-10	Appointment of LTC Paul Almanza as the Article 32 Investigating Officer
	5-Aug-10	Defense emailed RCM 706 board that there is no need for members of the board to have a security clearance because the defense will ensure the accused does not divulge classified information
	5-Aug-10	Defense requested opportunity to review both the long and short-form of the RCM 706 board results
	9-Aug-10	Communication between the parties regarding the RCM 706 board, defense delay requests, and the protective order
	10-Aug-10	Communication between the parties regarding the RCM 706 board and defense delay requests
	10-Aug-10	Email from RCM 706 board notifying the parties that the first evaluation of accused is scheduled for 27 August 2010
	11-Aug-10	Defense requested delay of Article 32 investigation until completion of RCM 706 board
	12-Aug-10	Article 32 Investigating Officer recommended that SPCMCA approve the defense delay request for completion of RCM 706 board
	12-Aug-10	SPCMCA approved defense request for delay of Article 32 investigation
	18-Aug-10	2/10 MTN redeployed to Fort Drum, NY
	25-Aug-10	Defense requested delay of RCM 706 board until forensic psychiatry expert appointed to defense team
	25-Aug-10	RCM 706 board notified the parties that it would begin assessment of the accused on 27 August 2010
	25-Aug-10	SPCMCA approved defense request for delay of Article 32 investigation
	26-Aug-10	Defense notified RCM 706 board that the accused will need to divulge classified information during evaluation
	26-Aug-10	Defense requested appointment of security officer to RCM 706 board
	26-Aug-10	Defense requested delay of RCM 706 board until procedures adopted to safeguard classified information
	26-Aug-10	Defense requested results of classification reviews by Original Classification Authorities (OCAs)
	3-Sep-10	Defense requested security clearance for each defense member, to include experts
	17-Sep-10	SPCMCA appointed defense security expert consultant and security

		officer for RCM 706 board
	17-Sep-10	SPCMCA issued Protective Order Governing Classified Information
	17-Sep-10	SPCMCA ordered Preliminary Classification Review of Accused's Mental Impressions (PCR)
	18-Sep-10	Defense objected to PCR
	22-Sep-10	SPCMCA ordered Superseding PCR
	28-Sep-10	Defense requested a second security expert
	28-Sep-10	Defense requested proper container to store classified information
	28-Sep-10	Defense requested second defense security expert to assist PCR, for PCR to take place in SCIF, and for the accused to be given access to classified information
	12-Oct-10	SPCMCA appointed expert consultant in forensic psychiatry for defense
	12-Oct-10	SPCMCA appointed second defense security expert to assist with PCR
	12-Oct-10	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	19-Oct-10	Defense notified prosecution that the security experts believed a two-week time period was unrealistic to complete PCR verification process
	19-Oct-10	Defense requested update on the PCR rehearsal
	21-Oct-10	Defense requested several materials, including a TS-SCI stand-alone computer with removable hard drive, for security experts
	21-Oct-10	WikiLeaks released purported CIDNE Iraq database
	22-Oct-10	Discovery Production Bates # 00000001 - 00000429 (429 pages), including Preferral Packet [Unclassified]
	27-Oct-10	Defense security experts interviewed the accused for PCR
	28-Oct-10	Defense requested appointment of expert in information assurance to the defense team
	29-Oct-10	Defense submitted discovery request
	29-Oct-10	Defense submitted requests in response to PCR
	1-Nov-10	Defense requested prosecution provide defense security experts the following material: (1) classification guide used to classify compromised information; (2) the link to the video allegedly released by the accused for defense security experts; and (3) any damage assessments
	10-Nov-10	Discovery Production Bates # 00000430 - 00000450 (21 pages), including Initial Article 32 Packet [Unclassified]
	10-Nov-10	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	10-Nov-10	SPCMCA issued Supplemental Guidance on Experts' Access to Classified Information
	11-Nov-10	Discovery Production Bates # 00000451 - 00000474 (24 pages), including Initial Article 32 Packet [Unclassified]
	15-Nov-10	Defense submitted discovery request

19-Nov-10	Discovery Production Bates # 00000475 - 00000662 (188 pages), including Initial Article 32 Packet [Unclassified]
28-Nov-10	WikiLeaks began releasing purported Department of State cables that are the subject of Specification 12 and 13 of Charge II
29-Nov-10	Defense requested appointment of investigator for defense
30-Nov-10	Defense requested that the accused wear ACUs during defense meeting and inquired whether the accused can have hand and leg restraints removed during the meeting
8-Dec-10	Defense requested coordination for the accused's movement for defense meeting
8-Dec-10	Defense submitted discovery request
13-Dec-10	PCR completed
17-Dec-10	SPCMCA denied defense request for appointment of investigator for defense
17-Dec-10	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
18-Dec-10	Defense requested the names of those members on the RCM 706 board
21-Dec-10	Communication between the parties to discuss possible additional charges, different forensic psychiatrists, disclosures under MRE 505(h), and POI status
30-Dec-10	Defense submitted MRE 505(h) motion for RCM 706 board
3-Jan-11	Discovery Production Bates # 00000663 - 00000771 (109 pages), including Preliminary Inquiry [Unclassified]
5-Jan-11	Defense submitted memorandum requesting change of the accused's classification and assignment
5-Jan-11	Prosecution responded to defense notification under MRE 505(h)
9-Jan-11	Defense requested speedy trial
10-Jan-11	Defense submitted discovery request
12-Jan-11	Defense requested CAPT Moore replace COL Benedek as forensic psychiatrist for defense
13-Jan-11	Communication between the parties discussing defense request for security clearances, defense expert requests, and RCM 305(g) request
13-Jan-11	Defense requested speedy trial
14-Jan-11	Discovery Production Bates # 00000772 - 00000851 (80 pages), including 15-6 Investigation [Unclassified]
14-Jan-11	SPCMCA appointed expert in information awareness for defense
14-Jan-11	SPCMCA approved defense request for expert in forensic psychiatry
14-Jan-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
19-Jan-11	Defense submitted Article 138 complaint
19-Jan-11	Defense submitted preservation request
20-Jan-11	Communication between the parties discussing confinement conditions
20-Jan-11	SPCMCA requested Quantico documents

	21-Jan-11	Communication between the parties discussing MRE 505
	21-Jan-11	SPCMCA denied defense RCM 305(g) request
	24-Jan-11	Defense requested coordination for transportation of accused for defense meeting
	28-Jan-11	Defense requested whether Quantico had released the requested documents to the prosecution
	31-Jan-11	RCM 706 board granted proper security clearance
	3-Feb-11	SPCMCA ordered RCM 706 to resume
	7-Feb-11	Defense notified the RCM 706 board that the board should feel free to take the time necessary to conduct a thorough and complete examination, and that any request for an extension of time by the board would undoubtedly be granted
	7-Feb-11	Defense requested that RCM 706 board allow defense psychiatric expert to observe RCM 706 proceeding
	9-Feb-11	Discovery Production Bates # 00000852 - 00001049 (198 pages), including Medical Records [Unclassified]
	9-Feb-11	Discovery Production Bates # 00001050 - 00001051 (2 pages), including Certificate of Service - to Liberty TDS [Unclassified]
	14-Feb-11	Prosecution responded to defense's MRE 505(h)(1) request
	15-Feb-11	Defense replied to prosecution's MRE 505 response
	15-Feb-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	16-Feb-11	Defense submitted discovery request
	17-Feb-11	Defense submitted motion to compel discovery
	18-Feb-11	Defense requested for appointment of neuropsychologist for defense
	21-Feb-11	Defense requested that the prosecution arrange for a SCIF to be available for the defense meeting
	25-Feb-11	Prosecution submitted response to defense's motion to compel discovery to the Article 32 investigating officer
	1-Mar-11	Additional charges preferred
	1-Mar-11	Defense notified of additional charges
	3-Mar-11	Defense requested to meet with the accused in SCIF prior to RCM 706 board interview
	5-Mar-11	Defense requested coordination for transportation of the accused for defense meeting
	5-Mar-11	Prosecution notified defense that SCIF is available any Saturday for the defense to meet with the accused before the RCM 706 board
	7-Mar-11	Defense requested to meet with the accused before the RCM 706 board and for that meeting to take place on 25 or 26 March 2011 to allow the defense more time to purchase transportation tickets because of an increase in the cost of transportation
	8-Mar-11	Defense requested appointment of mitigation expert for defense

8-Mar-11	Discovery Production Bates # 00001052 - 00011448 (10397 pages), including 35F TRN POI and Quantico Art 138 Response [Unclassified]
10-Mar-11	Defense submitted rebuttal for Article 138 complaint
14-Mar-11	RCM 706 board agreed to arrange appointment for brain imaging and neurological examination of the accused
14-Mar-11	RCM 706 board submitted extension request
18-Mar-11	Original charges dismissed
18-Mar-11	SPCMCA approved RCM 706 board extension
18-Mar-11	SPCMCA directed Article 32 investigating officer to investigate additional charges
18-Mar-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
23-Mar-11	Accused had MRI and was seen by neurologist
26-Mar-11	Accused met with defense counsel at SCIF, pursuant to defense's request
31-Mar-11	Defense requested that the unit obtain a new ACU for the accused
5-Apr-11	SPCMCA appointed neuropsychologist for defense
5-Apr-11	SPCMCA denied defense request for mitigation expert
6-Apr-11	Defense requested clarification on Quantico's interpretation of its rules relating to visitors
7-Apr-11	Discovery Production Bates # 00011449 - 00011462 (14 pages), including Art 138 Response [Unclassified]
9-Apr-11	Discovery Production Bates # 00011463 - 00011573 (111 pages), including Art 138 Response [Unclassified]
9-Apr-11	RCM 706 board interviewed the accused
10-Apr-11	Defense submitted Article 138 complaint to Secretary of the Navy
12-Apr-11	Discovery Production Bates # 00011574 - 00012711 (1138 pages), including Security Classification Guide, OMPF, Enemy Information [Unclassified]
12-Apr-11	Prosecution responded to defense discovery request dated 10 January 2011
12-Apr-11	Prosecution responded to defense discovery request dated 16 February 2011
13-Apr-11	Defense requested coordination for transportation of accused for defense meeting
15-Apr-11	RCM 706 board submitted extension request
15-Apr-11	SPCMCA approved RCM 706 board extension request
18-Apr-11	Defense requested clarification on discovery production
18-Apr-11	Discovery Production Bates # 00012712 - 00012720 (9 pages), including Art 138 Response [Unclassified]
20-Apr-11	Accused transferred to Fort Leavenworth
20-Apr-11	Defense requested expert neuropsychologist for Fort Leavenworth
20-Apr-11	Defense requested miscellaneous items from Quantico and logistics of

		scheduling defense meetings with the accused
	22-Apr-11	RCM 706 board concluded
	22-Apr-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	24-Apr-11	WikiLeaks began releasing purported JTF-GTMO documents
	25-Apr-11	Prosecution requested delay of Article 32 investigation
	25-Apr-11	SPCMCA emailed defense for input on prosecution's request
	26-Apr-11	Defense objected to prosecution's request for delay of Article 32 investigation
	29-Apr-11	SPCMCA approved prosecution's request for a delay of Article 32 investigation
	4-May-11	SPCMCA approved defense's request for expert in neuropsychology
	12-May-11	Discovery Production Bates # 00012721 - 00012924 (204 pages), including Art 138 Response [Unclassified]
	12-May-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	13-May-11	Defense submitted discovery request
	22-May-11	Prosecution submitted request to delay Article 32 investigation
	24-May-11	Defense objected to prosecution's request to delay Article 32 investigation
	24-May-11	SPCMCA emailed defense for input on prosecution's request
	25-May-11	Defense requested forensic images on all media involved, digital forensic reports, and information relating to government experts
	26-May-11	SPCMCA approved prosecution's request for a delay of Article 32 investigation
	9-Jun-11	Discovery Production Bates # 00012925 - 00012933 (9 pages), including Art 138 Response [Unclassified]
	10-Jun-11	Defense requested a defense safe to be located at Fort Myer and Fort Leavenworth TDS offices
	17-Jun-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	22-Jun-11	SPCMCA approved facility and storage of classified information
	22-Jun-11	SPCMCA issued Protective Order governing law enforcement sensitive information and other sensitive information
	22-Jun-11	SPCMCA issued Protective Order governing Secretary of the Army AR 15-6 investigation
	27-Jun-11	Prosecution requested delay of Article 32 investigation
	29-Jun-11	Defense objected to prosecution's request to delay Article 32 investigation
	29-Jun-11	SPCMCA emailed defense for input on prosecution's request to delay Article 32 investigation
	30-Jun-11	Discovery Production Bates # 00012934 - 00021363 (8430 pages), Sec Army 15-6 [Unclassified]

	5-Jul-11	SPCMCA approved prosecution's request to delay Article 32 investigation
	6-Jul-11	Defense requested additional funding for experts in computer forensics
	13-Jul-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	22-Jul-11	Prosecution requested delay of Article 32 investigation
	25-Jul-11	Defense objected to prosecution's request for delay of Article 32 investigation
	25-Jul-11	Defense requested speedy trial
	25-Jul-11	Discovery Production Bates # 00021364 - 00024382 (3019 pages), including CID information [Unclassified]
	25-Jul-11	Discovery Production Bates # 00036618 - 00036802 (185 pages), including CID information [Unclassified]
	25-Jul-11	SPCMCA emailed defense for input on prosecution's request to delay Article 32
	26-Jul-11	SPCMCA approved prosecution's request for a delay of Article 32 investigation
	1-Aug-11	Communication between the parties discussing forensic expert, location of Article 32, unclassified CID case file
	2-Aug-11	Discovery Production Bates # 00036803 - 00036803 (1 pages), including CID information [Unclassified]
	2-Aug-11	Prosecution disclosed discovery to the defense
	3-Aug-11	Defense requested supplies for defense security expert during RCM 706 board
	7-Aug-11	Defense requested a corporation, Cyber Agents, Inc., be appointed defense expert assistant
	8-Aug-11	Prosecution re-produced discovery for CPT Tooman
	9-Aug-11	Defense requested forensic expert
	9-Aug-11	Discovery Production Bates # 00036804 - 00042806 (6003 pages), including Sec Army 15-6 GOMORs [Unclassified]
	10-Aug-11	SPCMCA appointed defense expert in forensic psychiatry
	10-Aug-11	SPCMCA appointed defense forensic computer experts
	10-Aug-11	SPCMCA approved defense request for computer hardware
	10-Aug-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
	11-Aug-11	Discovery Production Bates # 00042807 - 00044864 (2058 pages), including Pretrial Confinement Documents [Unclassified]
	25-Aug-11	Prosecution requested delay of Article 32 investigation
	27-Aug-11	Defense objected to prosecution's request to delay Article 32 investigation
	27-Aug-11	SPCMCA emailed defense for input on request
	29-Aug-11	SPCMCA approved prosecution's request for delay of Article 32 investigation

1-Sep-11	Discovery Production Bates # 00044865 - 00045301 (437 pages), including Military Intelligence Investigations [Classified and Unclassified]
1-Sep-11	WikiLeaks began releasing purported Department of State cables
15-Sep-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
19-Sep-11	Discovery Production Bates # 00024383 - 00024459 (77 pages), including Deleted Information [Unclassified]
21-Sep-11	Defense submitted preservation request
26-Sep-11	Prosecution requested delay of Article 32 investigation
27-Sep-11	Defense objected to prosecution's request for delay of Article 32 investigation
28-Sep-11	Defense requested contact information for CID/CCIU personnel
28-Sep-11	SPCMCA approved defense's request for courier cards
28-Sep-11	SPCMCA approved prosecution's request for delay of Article 32 investigation
29-Sep-11	Communication between the parties regarding hard drives in SCIF and TOC
30-Sep-11	Defense requested supplies
30-Sep-11	Prosecution re-produced unclassified discovery to the defense
2-Oct-11	Defense requested clarification regarding scheduling interviews with CID personnel
3-Oct-11	Discovery Production Bates # 00024460 - 00036617 (12158 pages), including CID information [Unclassified]
4-Oct-11	Prosecution emailed defense the federal protective orders
12-Oct-11	Discovery Production Bates # 00045302 - 00045581 (280 pages), including CID information [Unclassified]
12-Oct-11	SPCMCA issued Excludable Delay Memorandum
13-Oct-11	Defense submitted discovery request
14-Oct-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
20-Oct-11	Discovery Production Bates # 00045582 - 00046073 (492 pages), including CID information [Unclassified]
25-Oct-11	Defense objected to prosecution's request for a delay of Article 32 investigation
25-Oct-11	Prosecution requested a delay of Article 32 investigation
25-Oct-11	Prosecution submitted ground rules for proposed presentation of case to the defense
27-Oct-11	SPCMCA approved prosecution's request to delay Article 32 investigation
4-Nov-11	Discovery Production Bates # 00046074 - 00375129 (329056 pages), including CID Forensic Reports [Unclassified]
8-Nov-11	Discovery Production Bates # 00375130 - 00375182 (53 pages), including Military Intelligence Investigation [Unclassified]

8-Nov-11	Discovery Production Bates # 00376954 - 00378175 (1222 pages), including Charged Documents, C3 Report, Classification Review [Classified]
8-Nov-11	Discovery Production Bates # 00378176 - 00378176 (1 pages), including Volumes.txt [Unclassified]
8-Nov-11	Discovery Production Bates # 00378177 - 00378624 (448 pages), including Military Intelligence Investigation and Classified CID information [Classified and Unclassified]
8-Nov-11	Prosecution briefed defense on prosecution's case
10-Nov-11	Defense requested that prosecution provide a forensic briefing to the accused
15-Nov-11	Defense submitted discovery request
16-Nov-11	Defense objected to prosecution's request for delay of Article 32 investigation and proposed a start date of the Article 32 investigation for 12 December 2011
16-Nov-11	Defense submitted discovery request
16-Nov-11	Prosecution requested a delay of the Article 32 investigation and requested a start date of the Article 32 investigation for 16 December 2011
16-Nov-11	SPCMCA approved prosecution's request for delay of Article 32 investigation and ordered Article 32 investigation to start no earlier than 16 December 2011
16-Nov-11	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
16-Nov-11	SPCMCA issued special instructions to the Article 32 investigating officer
17-Nov-11	Discovery Production Bates # 00378626 - 00378649 (24 pages), including CID information and classification review(s) [Classified and Unclassified]
17-Nov-11	Discovery Production Bates # 00378650 - 00384256 (5607 pages), including Sec Army 15-6 GOMORs [Unclassified]
18-Nov-11	Prosecution briefed defense and accused on prosecution's case
22-Nov-11	Defense submitted request for evidence production to Article 32 investigating officer
23-Nov-11	Discovery Production Bates # 00378625 - 00378625 (1 pages), including DA Form 4137 [Classified]
23-Nov-11	Discovery Production Bates # 00402272 - 00407990 (5719 pages), including Sec Army 15-6 GOMORs [Unclassified]
23-Nov-11	Discovery Production Bates # 00407991 - 00409678 (1688 pages), including CID information and DSS case file [Unclassified]
28-Nov-11	Defense requested computer software
1-Dec-11	Discovery Production Bates # 00384257 - 00402271 (18015 pages), including Sec Army 15-6 GOMORs [Unclassified]
4-Dec-11	Defense requested the prosecution provide any impeachment material in a separate production from the remaining discovery

6-Dec-11	Discovery Production Bates # 00409679 - 00410599 (921 pages), including CID information [Unclassified]
7-Dec-11	Discovery Production Bates # 00375183 - 00375197 (15 pages), including Sec Army 15-6 GOMORs [Unclassified]
7-Dec-11	Discovery Production Bates # 00410600 - 00410670 (71 pages), including Enemy information, accused's office work product, and classification review(s) [Classified]
8-Dec-11	Defense submitted inquiries regarding logistics of the Article 32 investigation
9-Dec-11	Defense requested a translation of a video that the prosecution revealed to the defense on 8 November 2011
9-Dec-11	Discovery Production Bates # 00375198 - 00376953 (1756 pages), including CID information, Schmiedl Files, Classification Reviews [Unclassified]
9-Dec-11	Discovery Production Bates # 00410671 - 00410689 (19 pages), including CID information [Unclassified]
16-Dec-11	Article 32 investigation began
19-Dec-11	Discovery Production Bates # 00410690 - 00410697 (8 pages), including CID information and pretrial confinement information [Unclassified]
19-Dec-11	Discovery Production Bates # 00410698 - 00410701 (4 pages), including Classification review [Classified and Unclassified]
22-Dec-11	Article 32 investigation concluded
24-Dec-11	Article 32 investigating officer delay began
2-Jan-12	Article 32 investigating officer delay concluded
3-Jan-12	Prosecution requested Article 32 Investigating Officer exclude as reasonable delay anytime between 22 December 2011 and 3 January 2012 that he did not work on the Article 32 investigation based on the federal holidays and weekends
3-Jan-12	SPCMCA issued Accounting Memorandum for Period of Excluded Delay
4-Jan-12	Article 32 investigating officer sent an email excluding as a reasonable delay the days between 23 December 2011 and 3 January 2012 when he did not work on the Article 32 investigation
7-Jan-12	Article 32 investigating officer delay began
8-Jan-12	Article 32 investigating officer delay concluded
11-Jan-12	Article 32 investigating officer completed his report and recommendations, including providing the SPCMCA with an excludable delay memorandum
12-Jan-12	Discovery Production Bates # 00410702 - 00410788 (87 pages), including Article 32 investigating officer's final report and pretrial confinement recordings [Unclassified]
18-Jan-12	Defense requested additional funding for forensic experts
20-Jan-12	Defense submitted discovery request

20-Jan-12	Discovery Production Bates # 00410789 - 00410870 (82 pages), including CID information and accused's Skype logs [Unclassified]
25-Jan-12	Defense requested assistance with travel arrangements for defense forensic experts
27-Jan-12	Discovery Production Bates # 00410871 - 00411342 (472 pages), including CID Docs, Art 32 Audio - Unclassified [Unclassified]
27-Jan-12	Discovery Production Bates # 00411343 - 00411366 (24 pages), including Manning Computer Logs, Closed session - 111218 [Unclassified]
27-Jan-12	Prosecution responded to defense discovery request dated 29 October 2010, 15 November 2010, 8 December 2010, 10 January 2011, 16 February 2011, 13 May 2011, 13 October 2011, 15 November 2011, 16 November 2011, and 20 January 2012.
30-Jan-12	Defense requested an interview with three OCAs
31-Jan-12	Defense requested contact information for three OCAs
31-Jan-12	Defense submitted discovery request
3-Feb-12	Charges referred
3-Feb-12	Court received Electronic Docket Notification
6-Feb-12	Defense requested coordination for transportation of accused to defense meeting
8-Feb-12	Telephonic RCM 802 session
16-Feb-12	Defense filed Motion to Compel Discovery
23-Feb-12	Arraignment
29-Feb-12	Defense requested clarification on Touhy regulation
5-Mar-12	Defense requested clarification on Touhy regulation
11-Mar-12	Defense requested that prosecution retain a commercial email account to resolve email issues
13-Mar-12	Discovery Production Bates # 00411367 - 00412613 (1247 pages), including CID information/Attestations/PTC Visitation Logs, Audio Logs [Unclassified]
15-Mar-12	Article 39(a) session began
16-Mar-12	Article 39(a) session concluded
16-Mar-12	Discovery Production Bates # 00412614 - 00417914 (5301 pages), including FBI information [Unclassified]
22-Mar-12	Email sent by then-CPT Fein stating "the government's position is that classified information does not fall under RCM 701. The information the defense has requested in discovery is classified and the prosecution has no reason to believe it is not classified. Because the information is classified, RCM 701 does not apply (as per RCM 701(a) and (f)), which leaves the prosecution to use the standards under MRE 505 along with Brady and its progeny. The defense provided no authority to apply RCM 701(a)(2) or (6) to classified information and all the authorities only reference unclassified information. The prosecution

		has relied on MRE 505 and Brady for regulation of what classified information is discoverable."
	23-Mar-12	Defense requested update on whether defense will be given SIPRNET access near Mr. Coombs' office in Rhode Island
	27-Mar-12	Defense requested assistance submitting Touhy request
	27-Mar-12	Defense requested clarification on what has been produced in discovery and under what standard
	28-Mar-12	RCM 802 telephonic conference
	9-Apr-12	Defense requested clarification on what discovery standard applied to grand jury material
	12-Apr-12	Discovery Production Bates # 00417915 - 00419646 (1732 pages), including FBI information, accused AKO-S email, trial documents, DISA and JIEDDO information [Classified and Unclassified]
	12-Apr-12	Discovery Production Bates # 00419647 - 00419804 (158 pages), including CID information, damage assessment(s), motions hearing audio [Unclassified]
	12-Apr-12	GCMCA approved defense request for additional funding for defense forensic experts
	13-Apr-12	Defense requested the prosecution provide the date the prosecution received the documents produced in discovery
	16-Apr-12	Defense requested whether there were any follow-up damage assessments from those previously produced
	19-Apr-12	Defense requested hard copies of charged documents for 18 USC 793 offenses be delivered to Naval War College
	19-Apr-12	Defense requested who redacted the FBI documents and under what standard
	23-Apr-12	Court ruled on Defense Motion to Dismiss All Charges
	24-Apr-12	Article 39(a) session began
	24-Apr-12	Discovery Production Bates # 00419805 - 00445503 (25699 pages), including Interim CID Forensic Reports [Classified and Unclassified]
	26-Apr-12	Article 39(a) session concluded
	8-May-12	Defense requested legal administrator for defense team
	10-May-12	Defense filed Motion to Compel Discovery #2
	15-May-12	Discovery Production Bates # 00445504 - 00447091 (1588 pages), including FBI information [Classified]
	15-May-12	Discovery Production Bates # 00447092 - 00447392 (301 pages), including Administrative documents, CID information, and damage assessment(s) [Unclassified]
	15-May-12	Discovery Production Bates # 00447393 - 00447439 (47 pages), including Damage assessments [Classified]
	18-May-12	Discovery Production Bates # 00447440 - 00447666 (227 pages), including FBI information [Classified and Unclassified]
	18-May-12	DOS Draft Damage Assessment available for inspection with prosecution [Classified with Special Control Measures]

	21-May-12	Discovery Production Bates # 00447667 - 00447817 (151 pages), including Grand jury information [Unclassified]
	21-May-12	Discovery Production Bates # 00447818 - 00447848 (31 pages), including Damage assessments and CIA information [Classified]
	22-May-12	Defense requested access to Department of State damage assessment
	24-May-12	Discovery Production Bates # 00447849 - 00447944 (96 pages), including Pretrial confinement recordings and photos, CID information, and trial documents [Classified]
	29-May-12	Discovery Production Bates # 00447945 - 00449240 (1296 pages), including Trial documents [Classified]
	30-May-12	Defense requested access to chain of command for each security expert to discuss job requirements
	30-May-12	RCM 802 telephonic conference
	1-Jun-12	Defense requested re-appointment of security experts to reflect job requirements
	4-Jun-12	Discovery Production Bates # 00449241 - 00449242 (2 pages), including DOE damage assessment [Classified]
	6-Jun-12	Article 39(a) session began
	6-Jun-12	DIA Information Review Task Force Report available for inspection with prosecution [Classified with Special Control Measures]
	7-Jun-12	Defense submitted discovery request
	8-Jun-12	Article 39(a) session concluded
	11-Jun-12	Defense requested that the prosecution prepare and produce an unclassified version of all classified damage assessments
	13-Jun-12	Discovery Production Bates # 00449243 - 00449402 (160 pages), including DHS damage assessment [Classified]
	18-Jun-12	Defense requested the appointment of security expert when defense reviews damage assessments
	25-Jun-12	Article 39(a) session
	26-Jun-12	Defense submitted discovery request
	2-Jul-12	Discovery Production Bates # 00508935 - 00508940 (6 pages), CIA WikiLeaks Task Force Report available for inspection with prosecution [Classified with Special Control Measures]
	3-Jul-12	Discovery Production Bates # 00449403 - 00449464 (62 pages), including CID information, trial documents, and DISA logs [Unclassified]
	3-Jul-12	Discovery Production Bates # 00449465 - 00449552 (88 pages), including CID report, damage assessment(s), and accused's emails [Classified]
	3-Jul-12	Prosecution responded to defense's discovery request date 26 June 2012
	6-Jul-12	Defense requested a safe for storage of classification information at MAJ Hurley's office

6-Jul-12	Defense requested access to WikiLeaks Task Force report and Department of State damage assessment during 16-20 July 2012 motion hearing
9-Jul-12	Defense submitted discovery request
12-Jul-12	Defense requested coordination for SCIF to review damage assessments
12-Jul-12	Discovery Production Bates # 00449553 - 00449571 (19 pages), including Pretrial confinement recordings and CID forensic report [Unclassified]
12-Jul-12	Discovery Production Bates # 00449572 - 00449581 (10 pages), including DISA information [Classified]
16-Jul-12	Article 39(a) session began
19-Jul-12	Defense submitted discovery request
20-Jul-12	Article 39(a) session concluded
26-Jul-12	Email sent by MAJ Fein to defense stating- "In preparation for the upcoming Article 13 motion, the prosecution began reviewing emails yesterday from members of the Quantico brig staff and the chain of command. The prosecution found some emails that are obviously material to the preparation of the defense for Article 13 purposes. In an effort to get these emails to you as soon as possible, we intend to produce them tomorrow and send them to you via email so that you have a copy immediately. We will also produce them according to our normal process. We estimate there are approximately 60 emails."
27-Jul-12	Email sent by MAJ Fein to defense stating- "In an effort to get these emails (BATES#: 00449793-00449942) to the defense as soon as possible, attached is the encrypted file containing the emails. Please change the extension to "e x e" (without spaces) and run the program with the standard password. In preparation for the upcoming motion, we reviewed these documents all day yesterday and found these to disclose."
27-Jul-12	Email sent by MAJ Fein to defense stating- "We received the emails with the original documents approximately six months ago and prioritized their review for Giglio/Jencks material based on potential witnesses, which is why we reviewed the material this week. "
27-Jul-12	Email sent by MAJ Fein to Court stating- "On 8 December 2010, the defense requested "[a]ny and all documents or observation notes by employees of the Quantico confinement facility relating to PFC Bradley Manning." The United States produced all documentation from the Quantico Brig either as we received it or at the end of the accused's pretrial confinement at Quantico. In an effort to preserve all records involving the accused, the prosecution requested Quantico preserve all documentation and their emails. The purpose of this preservation request was to ensure the accused's right to a fair trial by preserving any emails for future litigation concerning the discoverability of the emails and/or for the prosecution to conduct a

		Giglio and Jencks (RCM 914) check of the emails. On Wednesday, the prosecution started reviewing the emails for potential impeachment evidence or Jencks material, and during that review found 84 emails which we deemed obviously material to the preparation of the defense for Article 13 purposes. Within 24 hours, the United States notified the defense and sent the emails last night."
	27-Jul-12	Defense requested what discovery standard applied to the Quanticco emails
	27-Jul-12	Discovery Production Bates # 00449793 - 00449942 (150 pages), including Brig Emails [Unclassified]
	27-Jul-12	RCM 802 telephonic conference
	28-Jul-12	Discovery Production Bates # 00449582 - 00449764 (183 pages), including NGA information [Classified]
	1-Aug-12	Defense submitted discovery request
	2-Aug-12	Discovery Production Bates # 00449765 - 00449792 (28 pages), including USCYBERCOM and FBI damage assessments [Classified]
	2-Aug-12	Discovery Production Bates # 00449943 - 00479483 (29541 pages), including Joint Staff/DOD/HQDA/DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479484 - 00479489 (6 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479490 - 00479508 (19 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479509 - 00479512 (4 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479513 - 00479518 (6 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479519 - 00479522 (4 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479523 - 00479583 (61 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479584 - 00479590 (7 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479591 - 00479683 (93 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479684 - 00479685 (2 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00479686 - 00480519 (834 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480520 - 00480521 (2 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480522 - 00480624 (103 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480625 - 00480631 (7 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480632 - 00480670 (39 pages),

		including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480671 - 00480677 (7 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480678 - 00480785 (108 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480786 - 00480787 (2 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00480788 - 00481082 (295 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00481083 - 00481083 (1 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00481084 - 00494337 (13254 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00494338 - 00494340 (3 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00494341 - 00496277 (1937 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00496278 - 00496282 (5 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00496283 - 00496462 (180 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00496463 - 00496469 (7 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00496470 - 00498654 (2185 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498655 - 00498657 (3 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498658 - 00498721 (64 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498722 - 00498725 (4 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498726 - 00498769 (44 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498770 - 00498773 (4 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498774 - 00498870 (97 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498871 - 00498872 (2 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498873 - 00498926 (54 pages), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498927 - 00498928 (2 pages) (RECALLED), including DIA information [Classified]
	2-Aug-12	Discovery Production Bates # 00498929 - 00498964 (36 pages), including DIA information [Classified]

2-Aug-12	Discovery Production Bates # 00498965 - 00498965 (1 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00498966 - 00498997 (32 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00498998 - 00499000 (3 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499001 - 00499006 (6 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499007 - 00499010 (4 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499011 - 00499024 (14 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499025 - 00499026 (2 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499027 - 00499147 (121 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499148 - 00499148 (1 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499149 - 00499167 (19 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499168 - 00499172 (5 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499173 - 00499398 (226 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499399 - 00499402 (4 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499403 - 00499548 (146 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499549 - 00499552 (4 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499553 - 00499562 (10 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499563 - 00499564 (2 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499565 - 00499591 (27 pages), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499592 - 00499594 (3 pages) (RECALLED), including DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00499595 - 00504420 (4826 pages), including DIA information and other damage assessment(s) [Classified]
2-Aug-12	Discovery Production Bates # 00504421 - 00504481 (61 pages), including Pretrial confinement recordings and trial documents [Unclassified]
2-Aug-12	Discovery Production Bates # 00504482 - 00505060 (579 pages), including DIA information, DOS and DIA damage assessments marked

		[Classified]
	3-Aug-12	Discovery Production Bates # 00505061 - 00505183 (123 pages), including Damage assessments and CID information [Classified]
	3-Aug-12	Discovery Production Bates # 00505184 - 00505204 (21 pages), including CID information and various OCA documents [Unclassified]
	3-Aug-12	Discovery Production Classified digital evidence [Classified with Special Control Measures]
	3-Aug-12	Discovery Production NSA documents [Classified with Special Control Measures]
	6-Aug-12	Discovery Production Bates # 00505205 - 00505256 (52 pages), including damage assessments and enemy information [Classified]
	7-Aug-12	Discovery Production Bates # 00505257 - 00505257 (1 pages), including Intelink attestation [Unclassified]
	7-Aug-12	Discovery Production Bates # 00505258 - 00505808 (551 pages), including FBI information and variation of charged documents [Classified]
	10-Aug-12	Discovery Production Bates # 00505809 - 00506675 (867 pages), including DIA information [Classified]
	13-Aug-12	Defense requested prosecution's Giglio request for each government witness
	14-Aug-12	Discovery Production Bates # 00506676 - 00506684 (9 pages), including Quantico information [Unclassified]
	14-Aug-12	Discovery Production Bates # 00508691 - 00508934 (244 pages), including Quantico information [Unclassified]
	14-Aug-12	Prosecution responded to defense discovery request dated 1 August 2012
	16-Aug-12	Discovery Production Bates # 00506685 - 00508690 (2006 pages), including USCYBERCOM information [Classified]
	16-Aug-12	Discovery Production Bates # 00509516 - 00511906 (2391 pages), including USCYBERCOM information available for inspection with prosecution [Classified with Special Control Measures]
	17-Aug-12	Defense filed Motion to Compel Discovery #3
	21-Aug-12	Discovery Production Bates # 00508941 - 00509515 (575 pages), including DIA information [Classified]
	23-Aug-12	Discovery Production NCIX information available for inspection at ODNI HQ [Classified with Special Control Measures]
	27-Aug-12	Article 39(a) session began
	27-Aug-12	Discovery Production Bates # 00511907 - 00514453 (2547 pages), including Quantico emails [Unclassified]
	30-Aug-12	Article 39(a) session concluded
	13-Sep-12	Prosecution responded to defense discovery request dated 19 July 2012
	13-Sep-12	Prosecution responded to defense discovery request dated 9 July 2012

14-Sep-12	Discovery Production Bates # 00514501 - 00514898 (398 pages), DIA and ODNI information available for inspection with prosecution [Classified with Special Control Measures]
14-Sep-12	Discovery Production Bates # 00519353 - 00523672 (1286 pages), including DOS information [Classified]
14-Sep-12	Discovery Production DoS information [Classified with Special Control Measures]
15-Sep-12	Discovery Production Bates # 00514454 - 00514497 (44 pages), including DHS information [Unclassified]
15-Sep-12	Discovery Production Bates # 00514498 - 00514498 (1 pages), including DHS information [Classified]
19-Sep-12	Discovery Production Bates # 00514499 - 00514500 (2 pages), including DOE information [Unclassified]
19-Sep-12	Discovery Production Bates # 00514899 - 00515842 (944 pages), including DIA and CIA information [Classified]
19-Sep-12	Discovery Production Bates # 00515843 - 00519167 (3325 pages), including Quantico emails [Unclassified]
20-Sep-12	Discovery Production Bates # 00519168 - 00519352 (185 pages), including FBI information [Classified]
20-Sep-12	Discovery Production Bates # 00519353 - 00523672 (1286 pages), including DOS information [Classified], which was previously made available for inspection on 14 Sep 12
28-Sep-12	Discovery Production Bates # 00509516 - 00511906 (2391 pages), including USCYBERCOM previously made available for inspection on 16 Aug 12
28-Sep-12	Discovery Production Bates # 00514501 - 00514898 (398 pages), including DIA and ODNI information previously made available for inspection on 14 Sep 12


 ASHDEN FEIN
 MAJ, JA
 Trial Counsel

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Government Response
to Defense

Additional Requested Witnesses:
Article 13

16 October 2012

The United States reviewed the defense witness request dated 26 September 2012. Pursuant to Rule for Courts-Martial (RCM) 703(b)(1), the United States makes the following determinations regarding defense requested Article 13 witnesses:

1. Col Thomas Johnson: The United States denies production of Col Johnson. The defense's proffered testimony of Col Johnson is not relevant and necessary under RCM 703(b)(1). Col Johnson is irrelevant because he was a public affairs officer (PAO) responsible for relaying information to the media. As a PAO, Col Johnson did not make any determinations regarding the accused's classification and status. Col Choike, Col Oltman, CWO4 Averhart, and CWO2 Barnes will testify regarding the limited extent of LtGen Flynn's involvement, thereby making Col Johnson's testimony cumulative and unnecessary.
2. Capt Brian Villiard: The United States denies production of Capt Villiard. The defense's proffered testimony of Capt Villiard is not relevant and necessary under RCM 703(b)(1). Capt Villiard is irrelevant because he was a PAO responsible for relaying information to the media. As a PAO, Capt Villiard did not make any determinations regarding the accused's classification and status. CWO4 Averhart and CWO2 Barnes will testify regarding the requirement that the accused surrender his clothing, and CWO2 Barnes will testify regarding the events of 2 March 2011, thereby making Capt Villiard's testimony cumulative and unnecessary.



ALEXANDER VON ELTEN
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 16 October 2012.



ALEXANDER VON ELTEN
CPT, JA
Assistant Trial Counsel

APPELLATE EXHIBIT 351
PAGE REFERENCED: _____
PAGE 1 OF 1 PAGES

UNITED STATES OF AMERICA

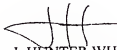
v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Notification
to the Court of
Department of State Files

16 October 2012

As of 16 October 2012, the United States has made available for inspection by the defense all Department of State documents for which the Court approved limited disclosure under Military Rule of Evidence 505(g)(2) in its ruling dated 28 September 2012. The prosecution will disclose in classified discovery all non-captioned documents by 26 October 2012. All captioned documents are available for inspection at the Department of State.

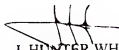


J. HUNTER WHYTE

CPT, JA

Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 16 October 2012.



J. HUNTER WHYTE

CPT, JA

Assistant Trial Counsel

APPELLATE EXHIBIT 352
PAGE REFERENCED: _____
PAGE 1 OF 1 PAGES

Appellate Exhibit 353
1 pages
ordered sealed for Reason 7
(government)
Military Judge's Seal Order
dated 20 August 2013
stored in the original Record
of Trial

Appellate Exhibit 353

Enclosure 1

4 pages

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army, [REDACTED])

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE REPLY TO
GOVERNMENT RESPONSE
TO DEFENSE MOTION TO
DISMISS FOR LACK OF A
SPEEDY TRIAL**

DATED: 17 October 2012

RELIEF SOUGHT

1. PFC Bradley E. Manning, by counsel, pursuant to the Sixth Amendment to the United States Constitution, Article 10, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 810, Rule for Courts Martial (R.C.M.) 707(a), (d)(1), and applicable case law, requests this Court to dismiss all charges and specifications with prejudice for lack of a speedy trial.

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. The Government bears the burden of persuasion on a motion to dismiss for denial of the right to speedy trial under R.C.M. 707. R.C.M. 905(c)(2)(B). Additionally, the Government bears the burden of persuasion on a motion to dismiss for denial of the right to speedy trial under Article 10. See *United States v. Mizgala*, 61 M.J. 122, 125 (C.A.A.F. 2005) ("Under Article 10, the Government has the burden to show that the prosecution moved forward with reasonable diligence in response to a motion to dismiss." (citing *United States v. Brown*, 28 C.M.R. 64, 69 (C.M.A. 1959))); *United States v. Calloway*, 47 M.J. 782, 785 (N-M. Ct. Crim. App. 1998) ("[W]hen the defense raises a motion to dismiss for lack of speedy trial under Article 10, UCMJ, 10 U.S.C. § 810, the prosecution has the burden of proof to establish that such immediate steps were taken."); *United States v. Laminman*, 41 M.J. 518, 520-21 (C.G. Ct. Crim. App. 1994) ("[I]t is our conclusion that RCM 905(c)(2)(B) places the burden of proof on the prosecution whenever the defense moves to dismiss for lack of speedy trial, whether the motion is framed under the terms of Article 10 or RCM 707."). Therefore, the Government bears the burden of persuasion on all aspects of this motion. The burden of proof on any factual issue necessary to decide this motion is by a preponderance of the evidence. R.C.M. 905(c)(1).

ARGUMENT

3. The Government claims that the "accused has been awaiting court-martial since 27 May 2010, which totals 867 days, as of the date of this response." See Government Response, p. 62, fn 11. The days are not calculated based on the date of the Government's Response; the days are

calculated as of the day the accused is brought to trial. Accordingly, if trial proceeds as scheduled in early February, it will be nearly 1000 days from the time PFC Manning was placed under pretrial restraint that he will have been brought to trial within the meaning of Article 10. This is a clear violation of PFC Manning's right to a speedy trial under R.C.M. 707 and Article 10.

A. Pre-Referral Delay

1. OCA Classification Reviews Were Not Completed In a Reasonably Diligent Manner

a) Classification Reviews Were Not Required Prior to the Article 32 Hearing

4. It is clear that PFC Manning's court martial was delayed for over a year and a half because of the Government's entirely self-imposed requirement that classification reviews needed to be conducted prior to the Article 32 hearing.

5. Contrary to the Government's contention, there is nothing within the Manual for Courts-Martial or in relevant case law that would require the Government to complete a classification review prior to the Article 32. See Government Response, p. 7 ("Before referral, a classification review is necessary to establish the classification of the evidence to meet an element of the charge."). The Government, as it did when it thought it was obligated to send redacted Defense motions to an OCA for review, undertook the added obligation of obtaining a classification review prior to the Article 32 without the requirement that it do so. The fact that the classification reviews were not required prior to the Article 32 hearing is proven by looking at the fact that ODNI classification review was disclosed to the Defense *after* the Article 32 hearing. Had the classification reviews been a legal pre-requisite, the Government could not have proceeded in the absence of this classification review.

6. A classification review is typically used by the Government for one of three distinct purposes:

- 1) In order to assert a privilege under M.R.E. 505;
- 2) In order to demonstrate that information is properly classified; or
- 3) In order to allow the Government the opportunity to argue for a closed session during *Grunden* hearings.¹

7. However, a classification review is not the only method available to the Government in order to assert a privilege under M.R.E. 505, demonstrate that information is properly classified, or argue for a closed session. The Government may assert a privilege under M.R.E. 505 or demonstrate that information is properly classified through testimony of an OCA. Likewise, the Government may demonstrate the need for a closed hearing through testimony, or, under R.C.M. 806, by requesting the military judge to make a finding based upon her own review of the information. Either alternative is a common sense solution whenever the Government is faced

¹ The classification review is also used by the Government to demonstrate the "overriding interest" that will be prejudiced if the proceedings remain open. The classification review typically will achieve this objective by describing the harm to national security that would result from disclosure to the public.

with a situation where a classification review has not been completed in a timely manner or has not even been initiated. The Government, however, failed to grasp the fact that classification reviews were not required prior to the Article 32 hearing (or for that matter for the court-martial). Instead, the Government treated the classification reviews as if they were somehow a prerequisite to proceeding with the court-martial.²

8. The trial counsel in this case are similar to those in the *Pyburn* case. See *United States v. Pyburn*, 1974 WL 13919 (C.M.A.). In *Pyburn*, the Court of Military Appeals found a violation of the accused's speedy trial rights where the trial counsel waited 62 days for laboratory results prior to starting the Article 32 hearing. The Court stated:

The crucial delay in this case, however, resulted from the 62 days it took for evidence to be analyzed in the forensic laboratory of another agency of the federal government. In this case of alleged rape in which the female victim was able to identify the accused but not able to say whether an act of sexual penetration occurred after she had been beaten unconscious, and because *the medical evidence was marginal at best, we cannot seriously question the relevancy of a laboratory analysis of the real evidence involved. Nevertheless, other strong evidence of guilt was available to the Government, and we believe that the investigating officer was not compelled to await the laboratory results before completing the statutory duties required by Article 32, UCMJ, 10 USC § 832. We do find a lack of diligence on his part, as well as on the members of the prosecution, in their failure to justify this 62-day period of delay.* Even where the prosecution does not exercise any direct control over the facility where evidence is analyzed, the duty of speedily trying the accused cannot be set aside by the unexplained slowness of another agency in analyzing and returning evidence. The 62-day delay associated with the laboratory analysis in this case was not a "really extraordinary circumstances" justifying the failure to try the accused within 90 days.

Id. at *180 (emphasis supplied).

9. As in *Pyburn*, this Court should conclude that although it would have been marginally more helpful for the Government to have the benefit of a classification review prior to the Article 32, a classification review was by no means a legal requirement. The Government clearly had other means of demonstrating that the charged information was classified at the time of the offense, describing the harm to national security, asserting a privilege on behalf of the OCA, or requesting a closed hearing. The Investigative Officer was not "compelled to await" the OCAs' classification review before "completing his statutory duties required by Article 32, UCMJ." *Id.* As such, the resulting delay, at least 238 days from the completion of the R.C.M. 706 Board on 22 April 2011 until the start of the Article 32 hearing on 16 December 2011, was a violation of PFC Manning speedy trial rights.

² The Government also indicated that a classification review was necessary to ensure the proper handling and storage of information during discovery. The Defense does not understand what this means. Classified information, including the charged documents, was produced *prior* to the classification reviews being completed. How then could the classification review be "necessary" to ensure proper handling and storage of information during discovery?

b) The Total Elapsed Time to Complete Classification Reviews was 530 Days, a Clearly Unreasonable Period of Time

10. The Government's explanation of which OCAs were tasked with completing a classification review when is less than clear. It appears that there was some discussion and coordination of classification reviews early on in the case. The Government states in its Response:

The prosecution began working to facilitate discovery immediately, which required, *inter alia*, obtaining classification reviews. Directly following prefferal of the original charges on 5 July 2010, the trial counsel in Iraq began reaching out to DOS and DOD for assistance in identifying the appropriate personnel to conduct classification reviews of the charged documents. *See* Enclosure 10. In July 2010, the trial counsel met with United States Army Criminal Investigation Command (CCIU) and DOJ in Wiesbaden, Germany to discuss the way forward. At that meeting, it was determined that DOJ (based on their ongoing relationships and experience with national security cases) would help facilitate the coordination for DOS and DOD information. *See id.*

See Government Response at p. 4-5.

11. The Government continued:

On 28 July 2010, with coordination from DOJ, the trial counsel requested the assistance from DOD for classification reviews of classified documents. On 30 July 2010, the trial counsel was notified that DOD was coordinating with 1st Cavalry Division to facilitate the classification review of the video that is the subject of Specification 2 of Charge II. *See id.*

Upon transfer of the accused to MDW, the prosecution continued the process of requesting classification reviews from various organizations. *See* Enclosures 20 and 21.

Id. at p. 7-8.

12. The Government then conveniently skips over the eight month period from July 2010 to March 2011. It then picks up in March 2011:

After additional charges were preferred [in March 2011], the prosecution memorialized its requests for OCAs to prepare classification reviews of the charged documents and evidence necessary for the Article 32 investigation. Pre-referral and in preparation for the Article 32 investigation, the prosecution requested classification review(s) of CENTCOM, OGA#1, DOS, SOUTHCOM, DISA, CYBERCOM, INSCOM, OGA#2, ODNI, and DOD. *See* Enclosures 20 and 21. ...

The prosecution submitted formal requests for classification reviews as follows:

- i. CENTCOM. On 18 March 2011, the prosecution submitted a written request to CENTCOM for classification reviews. *See* Enclosures 20-21.
- ii. OGA#1. On 18 March 2011, the prosecution submitted a written request to OGA#1 for classification reviews. *See* Enclosures 20-21.
- iii. DOS. On 18 March 2011, the prosecution submitted a written request to DOS for classification reviews. *See* Enclosures 20-21.
- iv. SOUTHCOM. On 18 March 2011, the prosecution submitted a written request to SOUTHCOM for classification reviews. *See* Enclosures 20-21.
- v. DISA. On 18 March 2011, the prosecution submitted a written request to DISA for a classification review of evidence it intended to use. *See* Enclosures 20-21.
- vi. CYBERCOM. On 18 March 2011, the prosecution submitted a written request to CYBERCOM for a classification review of evidence it intended to use. *See* Enclosures 20-21.
- vii. ODNI. On 18 March 2011, the prosecution submitted a written request to ODNI for a classification review of evidence it intended to use. *See* Enclosures 20-21.
- viii. OGA#2. On 18 March 2011, the prosecution submitted a written request to OGA#2 for a classification review of evidence it intended to use. *See* Enclosures 20-21.
- ix. DOD. On 30 November 2010, the prosecution submitted a written request to DOD for a classification review of evidence it intended to use. *See* Enclosures 20-21.
- x. INSCOM. On 18 March 2011, the prosecution submitted a written request to INSCOM for a classification review of evidence it intended to use. *See* Enclosures 20-21.

Id.

13. With the exception of DOD, the Government apparently submitted written requests for classification reviews to all the OCAs on 18 March 2011.³ The Government never once answers the million dollar question: *Why did the Government wait 295 days before submitting requests to the OCAs to review the charged documents?* 295 days. That, in itself, would violate PFC Manning's speedy trial rights more than two times over.

³ It had apparently drafted classification review requests as early as August 2010. *See Chronology* ("20-Aug-10 Fri Drafted the Department of State Classification Review request"). The Government provides no explanation for why it did not submit this request until seven months later.

14. Strangely, the Convening Authority began excluding periods from the speedy trial clock based on "Original Classification Authorities' (OCA) reviews of Classified Information" beginning on 12 July 2010.⁴ How could the Convening Authority have excluded time from the speedy trial clock based on a request that did not yet happen? In other words, it was not until 18 March 2011 that the Government requested the majority of the OCAs to complete a classification review. How could the classification review then have been a basis for delay from 12 July 2010 to 18 March 2011? Not surprisingly, the Government provides no explanation for the glaring inconsistency in dates. Surely if the Convening Authority approved delays on the basis of something that was not happening, this action would constitute an abuse of discretion.

15. The Defense is not convinced that the OCAs began the classification review process on 18 March 2011, when the Government submitted its formal requests. The Defense believes that the Government focuses on this date because it appears that less time elapsed between the submission of the request for the classification review and completion of the review. That is, 8 months to complete a classification review yielding a 3-page document looks a little better than 18 months to complete a classification review yielding a 3-page document. The Government's Chronology and Enclosure 20 seem to show that the OCA classification reviews were happening earlier than 18 March 2011. For instance, the memorandum to the various OCAs on 18 March 2011 asks the OCAs to "finalize" their classification review, not to "start" their classification review (*see, e.g.*, Enclosure 20, Memoranda to Department of State, ODNI, SOUTHCOM, etc. dated 18 March 2011). It is clear from the term "finalize" combined with the suspense dates on these memoranda that the OCAs had nearly completed (or should have nearly completed) the classification reviews on 18 March 2011. And yet, the OCAs did not complete their reviews of the classified evidence until shortly before the Article 32 hearing in December 2011. In particular, according to the Government's Response, the Defense received the OCA classification reviews on the following dates:

CENTCOM:	8 November 2011
OGA#1:	8 November 2011
DOS:	8 November 2011
SOUTHCOM:	17 November 2011
CYBERCOM:	8 November 2011 ⁵
ODNI:	12 January 2012

Id. at p. 24-25. The Government does not provide information on when it received and provided the DOD classification review to the Defense. However, according to the Defense's records, the DOD classification review was provided to the Defense in mid-November 2011.

⁴ In the SPCMCA Excludable Delay Memoranda, the Convening Authority lists "Defense Request for Results of Government's Classification Reviews by OCAs, dated 26 August 2010." The Defense request cannot be used as the basis for delay because it is derivative of requirements already borne by the Government. For instance, if the Defense requested *Brady* material, this could not serve as the basis for delay since the Government already bears the obligation to provide *Brady* material. This "basis" for delay is an attempt to make it look like the delay is equally attributable to the Government and the Defense – which it is most certainly not.

⁵ The Government had this review in its possession since 28 July 2011 and yet did not disclose it to the Defense until some three and a half months later.

16. Based on the 18 March 2011 request, it took the OCAs approximately 235 days to complete the classification reviews. However, it is clear that the classification reviews were near completion on 18 March 2011 (based on Enclosure 20 which asked the OCAs to “finalize” their reviews). In reality, then, it took the OCAs far longer than 235 days to complete their reviews.

17. For argument’s sake, when the 235 days from 18 March 2011 to 8 November 2011 are combined with the 295 days that elapsed prior to the OCAs being formally requested to complete the reviews, this amounts to a grand total of 530 days. In other words, *it was not until 530 days into this case that the majority of OCAs had completed their classification reviews*. This excludes the classification review that was provided to the Defense on 12 January 2012, which apparently took 594 days to produce to the Defense. As argued in the Defense Motion to Dismiss for Lack of Speedy Trial, these classification reviews were not Tolstoy novels – they were generally documents that spanned three or four pages. Under no stretch of the imagination can a 530 day lag in completing a three or four page classification review be characterized as reasonably diligent.

18. While the Government apparently followed-up with the OCAs to “re-request” that the OCAs complete their classification reviews, no one asked the OCAs what was taking so long. A “re-request” is not the same thing as following up with the OCAs to figure out what was taking so long and to expedite the process. *See* Government Response, Enclosure 20 (“The prosecution in the above-referenced case requests that the appropriate authority complete their classification reviews of the documents listed on the prosecution’s original written request, dated 18 March 2012). Moreover, these re-requests were cut-and-paste jobs of the original request, showing just how seriously the Government was taking its responsibilities and those of the OCAs. If a task is not getting completed, it makes little sense to copy-and-paste the original request three times and send it to the same recipient. Perhaps an email with four words (“What’s taking so long?”) would have been more effective.

19. There is no documentation from either the Trial Counsel or the Convening Authority inquiring as to what the OCAs were doing and what was taking so long. Both the Government and the Convening Authority preferred to let bureaucratic nature take its course and allow the OCAs a total of 530 days to complete their tasks. That the Convening Authority failed to ever make even the most basic inquiries as to the length of time the classification review process was taking demonstrates that he was just a rubber stamp for the Government. He was prepared to let the OCAs take as long as they wanted without asking any questions. Unlike the Convening Authority, however, the speedy trial clock does not wait for the OCAs.

20. The Government’s own documentation shows just how unreasonably long the OCA classification review process was taking. In the Government’s July 2011 re-request for the OCAs to complete their classification reviews, the Government gives the OCAs a three-week or so suspense period. *See* Government Response, Enclosure 20. Instead, it was not until approximately 5 months after prodding the OCAs that the classification reviews were ready to give to the Defense. The Government, in its communication with the OCAs in July 2011, indicates that time was of the essence in completing the classification reviews, noting that “all existing and future delays could severely hinder the prosecution.” *Id.* In full, the Government stated:

SPEEDY TRIAL. Under Article 10, UCMJ, when an accused is in pretrial confinement, the United States is required to use “reasonable diligence” to continue forward motion on resolving criminal cases. *See* 10 U.S.C. §810. The only remedy for a speedy trial violation is dismissal of the charges with prejudice. Additionally, the United States must ensure that it does not violate the accused’s Sixth Amendment right to a speedy trial. *See Barker v. Wingo*, 407 U.S. 414 (1972). All existing and future delays by your organization could severely hinder the prosecution. Enclosed is an information paper to further explain an accused’s speedy trial rights in the military justice system.

21. Now is the time that the all the delays caused by the OCAs should “seriously hinder the prosecution” as predicted by the Government almost a year and a half ago. The Government should not be permitted to talk out of both sides of its mouth – to claim to the OCAs that the failure of the OCAs to complete their task in a timely manner could “severely hinder the prosecution” for speedy trial purposes, and then claim that the failure of the OCAs to complete their task in a timely manner was, in effect, no big deal.

22. If the Government had approached the OCAs earlier and if the OCAs had actually completed what was asked of them in a timely manner, this case could have gone to trial much sooner than nearly three years after PFC Manning was placed in pretrial restraint. Assume the entire process took half the time that it actually did (approximately 265 days into the case – which the Defense submits would *still* be patently unreasonable). All other things being equal, including the innumerable discovery missteps of the Government, the case would then have been pushed up 265 days and PFC Manning would have been tried in May 2012 (not February 2013). It is abundantly clear that if the OCAs and the Government had exercised even a sliver of diligence in getting the classification reviews processed, the accused would have been brought to trial much sooner.

d) The Government Relies on Cut-and-Paste Conclusory Language in its Response to Justify the Inordinate Delay for the Classification Reviews But Never Explains Why They Took 530 Days to Complete

23. In Part III of the Government’s Response, it makes a cursory attempt to argue that the Convening Authority did not abuse his discretion in approving all the delays, which total a staggering 532 days.⁶ The Government parrots the exact same language over and over in this section, stating: “[The Convening Authority] had good cause to exclude this period of delay and did so for only so long as was necessary under the circumstances.” *See* Government Response (repeating this phrase a total of 18 times). Simply saying that the Convening Authority excluded the delay “for only so long as was necessary” does not make it so.

⁶ The Defense concedes, as argued in its Motion to Dismiss for Lack of a Speedy Trial, that some of these exclusions were proper based on Defense requests. However, for the purposes of PFC Manning’s Article 10 argument, it is clear that notwithstanding the Defense-requested delay for the 706 Board, the Government would not have been prepared to go to trial any sooner than it currently is, February 2013.

24. The Government never explains *why* 530 days were necessary to complete the classification reviews. Just because a case is complex does not mean that the Government gets carte-blanche to take 530 days to complete a two-page classification review. In other words, the Government fails to provide the *causal link* between the actual delay (530 days) and the task at hand. See *United States v. Longhofer*, 29 M.J. 22, 27 (C.M.A.1989) (“... we focus on the reasonableness of the duration of the event.”; “there must be a causal connection between the event and the delay sought to be excluded”). See also *United States v. Duncan*, 34 M.J. 1232, 1243 (A.C.M.R. 1992) (“We reject out of hand several bases for exclusion asserted pursuant to the “good cause” exception at trial. These include arguments premised upon (1) the complex nature of the case, (2) the fact that the case was highly classified, and (3) the fact that the appellant initiated a collateral civil suit in federal district court. While any one or a combination of these factors might have warranted the exclusion of a *reasonable* period of delay for good cause, a causal connection or nexus between the delay and the event offered in justification for exclusion must be established before the government is entitled to an exclusion for good cause.”). Under the Government’s logic, if it took the OCAs 1000 days to complete the classification reviews, this would be “only so long as was necessary under the circumstances.” The length of time a task took cannot then be bootstrapped to conclude that the time took was reasonable under the circumstances.

25. What the inquiry must entail – and what the Government has yet to explain despite being asked this question dozens of times – is *why* it took 530 days after PFC Manning was placed in pretrial restraint for the OCAs to complete their classification reviews. “It’s complex” simply does not cut it. There is no evidence that the Government ever conveyed to the Convening Authority what was taking so long (in particular given that the reviews were only a couple of pages), what the OCAs were doing on a daily or weekly basis, how many people were working on the task, how often the OCAs or their delegates worked on the review, and the like. These are the factors that any independent arbiter would want to know in assessing whether the length of the classification review process was reasonable. To the Defense, it appears wholly unreasonable that it would take a mind-boggling 530 days from the date of PFC Manning’s placement into pretrial restraint to complete classification reviews. 530 days spent “languishing in a brig” is a very long time. See *United States v. Kossman*, 38 M.J. 258, 261 (C.M.A. 1993) (“We happen to think that 3 months is a long time to languish in a brig awaiting an opportunity to confront one’s accusers, and we think Congress thought so, too. Four months in the brig is even longer. We see nothing in Article 10 that suggests that speedy-trial motions could not succeed where a period under 90 – or 120 – days is involved.”). The Convening Authority never asked these questions and the Government (then and now) has not provided any answers.

26. The Government misrepresents the Defense’s argument by stating that “the defense argues that the decision granting the delay must include justification to the defense’s satisfaction, which is more than the rule requires and a standard too nebulous to meet.” See Government Response (repeating this argument 11 times). The Defense made no such argument. The Defense did, however, say that the Convening Authority’s decision must be informed and independent so as to not constitute an abuse of discretion. By literally cutting-and-pasting the same bases for delay for well over a year, with no evidence that he was actually informed of any details pertaining to what kept “necessitating” the delay, the Convening Authority shows that he abdicated his responsibilities as a third-party neutral. Instead, the Convening Authority became an agent of the Government, who simply signed what was put in front of him (and in one case, allowed the

Government to sign for him). The Convening Authority must be more than a Government rubber stamp; here, he was not. Any reasonable person – and certainly, any reasonable Convening Authority – would at the very least inquire as to why the delay was taking so long and what could be done to expedite the process.

e) The Cases Cited By the Government For the “Reasonableness” of the 530 Day Classification Review Delay are Not On Point

27. The Government cites various cases as supporting its argument that the complexity in the case justified the Convening Authority excluding massive amounts of time from the speedy trial clock. None of the cases cited by the Government come anywhere close to the length of time that elapsed in this case, or was excluded in this case. The Government cited *United States v. Longhofer*, 29 M.J. 22 (C.M.A.1989) a total of 16 times to support its argument that the complexity of this case justifies the inordinate delay.⁷ In *Longhofer*, the Government argued, and the Court accepted, that “[t]his case involves highly classified information. All trial participants were required to receive a compartmentalized security clearance, and every step of this case has been complicated by the need to safeguard classified information.” *Id.* at 29. In short, *Longhofer* was a complicated classified evidence case, much like the instant case. In that case, the “elapsed time from notification of the charges to presentation of evidence was 322 days,” much less than the nearly 1000 days that have elapsed in this case. While the Government cites *Longhofer* apparently in support of its position that the delay in the instant case was reasonable, the court in *Longhofer* found that there was a violation of the accused’s speedy trial rights. Far from supporting the Government’s position, *Longhofer* undercuts it.

28. The Government also raises *United States v. Matli*, 2003 WL 826023 (A.F.Ct.Crim.App 2003) as supporting its argument that the complexity of this case justified the Convening Authority’s exclusion of so much time from the speedy trial clock. As the Government notes, the Court in *Matli* approved of the Convening Authority’s exclusion of 68 days from the speedy trial clock. Here, the Convening Authority excluded 532 days from the speedy trial clock, approximately 8 times as many days as the court in *Matli*. Moreover, the accused in *Matli* was brought to trial after 211 days of being placed in pretrial confinement. *Id.* at *7. Here, PFC Manning will have been in pretrial confinement for almost 1000 days prior to being brought to trial, five times longer than the accused in *Matli*.

29. Other cases cited by the Government, particularly the federal cases, are even less on point. See e.g. *United States v. Kramer*, 781 F.2d 1380 (9th Cir. 1986) (no speedy trial violation where accused’s court-appointed attorney moved for a four-to-five month continuance prior to scheduled trial date); *United States v. Beech Nut Nutrition Corp.* 871 F.2d 1181, 1197 (2d Cir. 1989) (defense counsel agreed to waive right to speedy trial and conceded that case was complex within the meaning of Speedy Trial Act); *United States v. McGrath*, 613 F.2d 361 (2d Cir. 1979) (excluding a mere 60 days from speedy trial clock due to complexity). Moreover, the Speedy

⁷ *Longhofer* is no longer good law on one point. It “applied [an older] version of R.C.M. 707(c), and ... focused on allocating blame for delays.” *U.S. v. Nichols*, 42 M.J. 715, 721-22 (A.F.Ct.Crim.App. 1995).

Trial Act does not govern this case; R.C.M. 707 does.⁸ In terms of the constitutional right to a speedy trial, military courts have indicated that the protections afforded an accused in the military justice system exceed those protections offered by the constitution. *United States v. Cooper*, 58 M.J. 54, 60 (C.A.A.F. 2003) (“Article 10 protects the right to a speedy trial, and ... imposes a more stringent standard than the Sixth Amendment”). See also Government Response, p. 62. Thus, it is not clear why the Government is resorting to federal cases – particularly when such federal cases provide no support for its position.

2. LTC Almanza Abused His Discretion in Excluding Time He Did Not Work on This Case From the Speedy Trial Clock

30. As argued in the Defense’s Motion to Dismiss All Charges for Lack of a Speedy Trial, LTC Almanza abused his discretion in excluding days that he did not work on the case. There is *no authority* for excluding federal holidays, weekends and days that an Investigating Officer did not work on the case from the speedy trial clock. Under this logic, every weekend and holiday between 27 May 2010 through 23 February 2011 should have been excluded (approximately 60 days). See *United States v. Duncan*, 34 M.J. 1232 (A.C.M.R. 1992) (attributing weekends to the Government for speedy trial purposes; note that *Duncan* was decided under the previous rule, which required that the Military Judge attribute delay to either the Defense or the Government).

31. The Government also claims that LTC Almanza’s civilian employer required him to work between 24 December 2011 and 3 January 2012. Be that as it may, the Government chose to have a Reserve civilian Investigating Officer presiding over the Article 32 hearing. The Government chose to let the IO’s orders expire on 23 December 2010 and to renew the orders (apparently) on 4 January 2011. The Government’s own decisions as to how to process this case – and in particular, how to mobilize a reserve IO – are attributable to the Government and cannot be excluded from the speedy trial clock.

32. Finally, the Government seems to think that the test under R.C.M. 707 for excludable delay is prejudice; it is not. The test is whether or not the time is properly excluded, irrespective of prejudice. The Government is mixing up R.C.M. 707 with PFC Manning’s Article 10 rights (where prejudice is one of several factors to consider).

3. The 706 Board Was Not Completed In a Reasonably Diligent Manner

33. The Government argues that the 285 days it took to complete the R.C.M. 706 board was a reasonable amount of time. The Government, in making its argument, conveniently leaves out facts that would undercut its position.

34. The Government points to the fact that even before the Defense submitted its request for a R.C.M. 706 board, LTC Maureen Kohn, the Deputy Staff Judge Advocate for the 1st Armored Division, took steps to start the process in Iraq. While it is true that LTC Kohn took some

⁸ The Government cites *United States v. Cooper*, 58 M.J. at 57 at Response, p. 53 for the proposition that the Court of Appeals for the Armed Forces has “cited [the Speedy Trial Act] for guidance concerning military speedy trial issues.” This citation does not appear in *Cooper*.

preliminary steps in anticipation of the need for an R.C.M. 706 and some immediate steps after the Defense's initial request for a R.C.M. 706 on 11 July 2010, the proactive nature of the Government stopped once LTC Kohn was no longer involved. After jurisdiction of the court-martial was transferred to the Military District of Washington on 28 July 2010, the wheels of diligence started to grind to a halt. Despite having a R.C.M. 706 request from the Defense, the Government took no immediate action to implement the request.

35. The Government asserts that the Defense's first argument that the prosecution "did nothing" between the above dates could not be further from the truth. How so? The reality is that the Government did nothing. Did the Government appoint board members? Did the Government start the process of the R.C.M. 706 board? No it did not. Instead, it wants to be patted on the back for appointing the board on 3 August 2010 and by having an email exchange with the defense counsel on 5 and 9 August 2010. Appointing a board and then emailing the Defense twice does not show diligence. The Government was at a standstill from 3 August to 25 August 2010. During that time, the Government could have appointed members, secured the relevant information for the board, and scheduled convenient times for the board members to meet with PFC Manning. None of this was done.

36. On 25 August 2010, PFC Manning retained Mr. David Coombs as his civilian counsel. At this point, Mr. Coombs raised a couple of issues that did necessitate the delay of the start of R.C.M. 706 board. Mr. Coombs requested a forensic psychiatrist to be appointed to the Defense team and for this individual to be permitted to evaluate and work with PFC Manning prior to the R.C.M. 706 board. See Government Response, Enclosure 35. Additionally, on 26 August 2010, the Defense requested a delay of the board "until procedures can be adopted to safeguard any classified information that will be discussed during the board's determination." See Government Response, p. 16.⁹

37. The Defense request for a preliminary classification review (PCR) necessitated the delay of the board from 26 August 2010 until 13 December 2010. The Defense does not challenge the Convening Authority's exclusion of that time under R.C.M. 707(c). However, that time is still attributable to the Government under Article 10. Just because a given period of time is properly excluded under R.C.M. 707(c) does not mean that the Government need not answer for that time period in the Article 10 inquiry; rather, the fact of proper exclusion under R.C.M. 707(c) has little to no bearing on whether the Government has used reasonable diligence under Article 10. See *United States v. Lazauskas*, 62 M.J. 39, 42 (C.A.A.F. 2005) ("The resolution under R.C.M. 707 does not preclude a party from asserting responsibility for delay under Article 10, UCMJ, or the Constitution."); *United States v. Mizgala*, 61 M.J. 122, 128-29 (C.A.A.F. 2005) ("Article 10 and R.C.M. 707 are distinct, each providing its own speedy trial protection. The fact that a prosecution meets the 120-day rule of R.C.M. 707 does not directly 'or indirectly' demonstrate that the Government moved to trial with reasonable diligence as required by Article 10."). While

⁹ The Government appears in its Response to subscribe some fault to the Defense for previously stating that PFC Manning would not disclose classified information as part of the R.C.M. 706 board. See Government Response, p. 16. The Government cites Enclosure 1 (Unclassified Email 0016) for its position. The email by MAJ Hurley, while stating that PFC Manning should not need to divulge classified information, indicate that if PFC Manning "feels he must disclose classified information, then he will let you know that there is more that he wants to say but cannot. CPT Fein and I will then seek an exception to the current order." *Id.*

the Defense's security experts were conducting the PCR, the Government stood in a "waiting posture."

38. Once the Defense security experts completed the PCR on 13 December 2010, the Government was not prepared to do anything. On 18 December 2010, the Defense asked the Government who, other than Dr. Sweda, was on the R.C.M. 706 board. Incredibly, the Government could not answer this simple question. As of 18 December 2010, 138 days after COL Coffman directed the appointment of a R.C.M. 706 board, the Government was still in a waiting posture. The Government promised that it would identify the board members that very week. *Id.* The Government's initial chronology indicates that the Government failed to do this and took the next two months to not only identify the board members but secure the requisite clearances for the board members. Why couldn't the Government have been proactive and completed this task during the time period between 3 August 2010, the date COL Coffman directed the board, and 13 December 2010, the date the PCR was completed?

39. Once it became clear to the Defense that nothing was being done, on 13 January 2011, the Defense emailed the Government and filed its demand for a speedy trial, along with its demand to remove PFC Manning from pretrial confinement. *See* Attachment 1. Despite filing this demand it took the Government another 100 days to complete the R.C.M. 706 Board.

40. A key fact for the Court to consider is that it only required the board to meet with PFC Manning on *one occasion*, 9 April 2011, in order to be able to complete its review. Once the board was able to meet with PFC Manning, the board completed the report 13 days later on 22 April 2011. The Government tries to avoid responsibility for the delay in completion of the R.C.M. 706 board by pointing to the security concerns of conducting the board on weekdays, the Defense's request that the board "take the time necessary to conduct a thorough and complete examination", and the Defense requesting to meet with PFC Manning prior to the board's interview of PFC Manning. All three are without merit and will be discussed in turn.

41. First, the Government, as it has done with other aspects of this case¹⁰, unnecessarily chose to complicate the R.C.M. 706 process. Instead of allowing the board to meet whenever it chose to, the Government established the unnecessary requirement that the board would only meet on weekends. Due to the self-imposed requirement that the board conduct its interview of PFC Manning on the weekends, the board was not able to complete its work in a timely manner, and was required to request two separate extensions. Both extensions of time should be placed at the Government's doorstep for R.C.M. 707 and Article 10 purposes.

42. Second, the Government reads the Defense's 7 February 2011 email as giving the green light for the board to take all the time that it wanted regardless of the reason for the amount of time. The Government's reading on the Defense's email is an inaccurate one. The Defense's email to Dr. Sweda stated the following:

Additionally, although the convening authority has given a four week suspense date for completion of the board, the defense views this suspense as aspirational.

¹⁰ The Government, as the Court has previously noted, has placed other time consuming requirements on itself without a need to do so. The Government sought to amend the Court's Protective Order due to its self-imposed requirement to run all Defense motions, even administrative or purely legal motions, by the OCAs prior to indicating whether it objected to publication of the motion.

Clearly, you and the board should feel free to take the time necessary to conduct a thorough and complete examination of PFC Manning. If the board requires an extension of time, you should feel free to submit such a request through the trial counsel. Undoubtedly, any request for an extension of time by the board would be granted. In the end, the most important thing is that the board takes the time it needs in order to feel comfortable with its results.

43. Far from waiving any concerns about the time it would take to complete the board, the Defense's email simply stated that Dr. Sweda should take time necessary to complete a thorough *medical review*. In this instance, the board was hamstrung by the Government's requirements to interview the accused on the weekends. The board did not need an extension of time to conduct additional tests or additional interviews. Such a request would be reasonable and consistent with the Defense saying "take the time necessary to conduct a thorough and complete examination of PFC Manning."

44. Lastly, the Government's characterization of the facts surrounding the Defense's request to meet with PFC Manning prior to the R.C.M. 706 board is patently false. The Government claims the delay was necessary in order for Defense counsel to save money on flights. The Government cites to Enclosure 1, email [84] and [85] to support its position that "although the prosecution arranged to have the accused ready to meet with the defense in a SCIF on 11 and 12 March 2011, on 7 March 2011 the defense counsel requested the prosecution to have a SCIF ready on 25 and 26 March 2011 in order to save money on flights." See Government Response, p. 66. Neither email cited by the Government supports its position.

45. Instead, the truth is that the delay was necessitated by the Government providing late notice to the Defense of meeting dates. On 15 February 2011, the Defense requested to meet with PFC Manning to ensure that he understood what he could discuss with the board. The nature of the discussion with PFC Manning required the meeting to take place in a SCIF. The Defense offered to meet with PFC Manning on 24 February 2011, well in advance of the board's plans to meet with PFC Manning to discuss classified information. The Government, however, could not arrange for that meeting because it was having trouble determining an appropriate location. The Defense requested updates and notified the Government that it could meet with PFC Manning at any time as long as it had some advance notice. On 7 March 2011, *nearly a month after the original request*, the Government notified the Defense that it could arrange for the Defense to meet with PFC Manning a mere four days later, on 11 and 12 March 2011. Due to the late notice, the Defense notified the Government that the price of a flight went from \$270.00 with a week's notice to \$1,300.00 with less than a week's notice. As such, the Defense asked if the Government could arrange for a time that gave the Defense some more reasonable advance notice. The Government responded, "The arrangements were finalized this morning, immediately before your email. We needed to wait until this morning to finalize the coordination with the different entities. All the systems are in place for this Friday and Saturday, if you want to go then, but we understand minimizing cost is a factor for you." See Attachment 2. Had the Government simply acted on the Defense's request and provided some reasonable advance notice, this would not have been an issue.

B. Pre and Post Referral Discovery Delay

46. As the Defense argued in its Motion to Dismiss for Lack of a Speedy Trial, this case has been marred by a wholly negligent prosecution. Many of the issues discussed in the Motion to Dismiss for Lack of a Speedy Trial (and discussed below) have arisen in other contexts. The Government would prefer to let this all be “water under the bridge” and for the Court to pretend that the Government did not commit some monumental errors in processing this case. For instance, the Government continues to pretend that it understood *Brady* all long. See Government Response at p. 18 (“The prosecution has always interpreted *Brady* to apply to the merits and sentencing. From the onset of this case, the prosecution has not waived from that position.”). Apparently, the Government has had a bout of amnesia. The Court found that the Government did not understand *Brady*. In Appellate Exhibit LXVIII, the Court ruled:

From the 8 March 2012 Government response to Defense Motion to Compel Discovery and its email of 22 March 2012, the Court finds that the Government believed RCM 701 did not govern disclosure of classified information for discovery where no privilege has been invoked under MRE 505. This was an incorrect belief. The Court finds that the Government properly understood its obligation to search for exculpatory *Brady* material, *however, the Government disputed that it was obligated to disclose classified Brady information that was material to punishment only.*

Id. at 2 (emphasis supplied). Not only did the Court find that the Government did not understand that *Brady* applied to sentencing, but the Court also found that “the Government believed RCM 701 did not govern disclosure of classified information for discovery where no privilege has been invoked under MRE 505.” *Id.* The Court stated, as plain as day, “this was an incorrect belief.” *Id.* The fact that the Government is trying to re-write history, and trying to convince the Court that the Court did not say what it very clearly said, is beyond belief. If the Government wishes to re-litigate this finding, it must request reconsideration of the Court’s Ruling. Otherwise, the Government is estopped from making arguments to the contrary.

47. Much as the Government wishes it were otherwise, the Government’s gross negligence in military discovery counts against the Government for speedy trial purposes. A prosecution that does not understand basic and fundamental discovery rules cannot be characterized as a reasonably diligent prosecution. It is against this wholly erroneous and convoluted view of discovery that the Government further compounded its negligence by deliberately dragging its feet and providing as little to the Defense as possible, as late as possible. In so doing, the Government resorted to a series of active misrepresentations, critical omissions, and half-truths. The Government’s behavior is nothing short of shameful.

48. Below, the Defense focuses on some of the extreme foot-dragging that occurred in this case. As argued previously, the Defense does not believe this was simply an inept prosecution. The Defense believes that this inept prosecution was part of a bigger design to impede PFC Manning’s right to a fair trial and to make an example out of him. There are simply too many questionable things that occurred in this case to ignore. These are chronicled in detail in the Defense’s Motion to Dismiss All Charges for Lack of a Speedy Trial. Below, however, the Defense specifically addresses the dates and facts presented by the Government in its Response and its Chronology.

1. **The Government Did Not Exercise Reasonable Diligence With Respect to ONCIX**

- a) The Government Concocted An Elaborate Series of Misrepresentations, Omissions, and Half-Truths to Hide Its Lack of Diligence with Respect to the ONCIX Damage Assessment

49. The Government's Response confirms definitively that the Government made an affirmative misrepresentation to the Court and the Defense about what it knew and when with respect to the ONCIX damage assessment. As the Court will recall, the Government represented to the Court that "ONCIX has not produced any interim or final damage assessment in this matter." Full stop. It claims to have repeated this "verbatim" from what it was told by ODNI/ONCIX. *See* Government Response, p. 29 ("the prosecution relied on the information provided by ODNI ... and used the ODNI response, verbatim, to address the Court's inquiries."). The Government fails to acknowledge that its "verbatim" statement represents only a quarter of the message from ODNI/ONCIX, which reads in full:

To date, ONCIX has not produced any interim or final damage assessment in this matter. *ONCIX is tasked with preparing a damage assessment. However, that draft damage assessment is currently a draft and is incomplete and continues to change as information is compiled and analyzed. Damage assessments can take months or even years to complete, and given the sheer volume of disclosures in this case we do not know when a draft product will be ready for coordination, must less dissemination.*

See Government Response, p. 29 (emphasis supplied). The Government told the Court a deliberate half-truth designed to convey a false impression – that ONCIX did not have *anything* by way of damage assessment as of March 2012. That way, the Government could avoid disclosing even the very existence of the damage assessment to the Defense.

50. Based on the Government's Response, it is clear that as of February 2011, the Government knew that ONCIX was charged with creating a damage assessment. *See* Government Response, p. 27. Moreover, on 22 September 2011, the Government was informed that ONCIX had a damage assessment that was "in working draft form." *Id.* p. 28. On 6 March 2012, ONCIX informed the Government that its "draft damage assessment is currently a draft." *Id.* at p. 29. These two statements regarding the ONCIX "draft," lifted directly from the Government's Response, show that the Government had *actual knowledge* as of 22 September 2011 that ONCIX had a "draft" damage assessment.

51. And yet, MAJ Fein plainly told a falsehood to the Court in oral argument when asked why he did not disclose the existence of the draft damage assessment to the Court when asked about it in the series of 21 March 2012 questions. MAJ Fein stated:

"we were unaware [when the Court asked its questions] that [ONCIX] had any other documentation created *that would even qualify as a draft.*"

Article 39(a) Audio Recording 6 June 2012 (emphases supplied). This was an outright misrepresentation. By the Government's own admission, MAJ Fein knew on 22 September 2011 that ONCIX had a "working draft." How could he, as an officer of the Court, represent that the

Government was “unaware that [ONCIX] had any other documentation created that would even qualify as a draft?” *Id.*

52. Lest MAJ Fein claim that he misspoke in this respect, he repeated this refrain multiple times during oral argument, claiming twice that the Government had “no clue” that ONCIX had a draft damage assessment as of 21 March 2012 when the Court asked its questions:

MAJ Fein: Your Honor, to be honest, the Government *does not necessarily know. We asked the questions and this is what we are given and what we relayed to the Court.* To us, there is a difference between a draft and an interim. A draft is an ongoing document. An interim is something that is produced as a snapshot in time, to memorialize the information. So we did have discussions with both entities on what the differences could be, but at the end of the day we asked “do you have any documentation or do you have a damage assessment, and if not, what do you have?” *And these were the responses that we were given and that we relayed to the Court.* So again, we have never maintained that we didn’t know they were doing one. In fact, I think it was publicly announced, and the Defense has notified the Court in one of the very first filings that it was publicly announced that they were doing one, *but the extent of what they did – the prosecution had no clue*, we had to rely on what they were told, or what we were told.

...

MAJ Fein: ... So, so the Government’s position isn’t that we didn’t know that they weren’t in the process of creating a damage assessment, *but we were unaware that they had any other documentation created that would even qualify as a draft.* Once we received the Court’s Order on 11 May, we had them relook and reassess and that is when we started this process.

...

MAJ Fein: ... *the prosecution had no clue, we had to rely on what they were told, or what we were told.* And then we remedied it the moment we realized that, that, we attempted to remedy it once we realized, and asked them to reassess their position based off the Court’s Order of 11 May. But they had to come back to us to say “yes, what we read actually means we have something like that. Not what necessarily we told you before.” Of course, everything changes as time goes on. So, once they told us, we then went through the procedures and we are here.

...

MAJ Fein: Correct your Honor. It is our belief, at that point, that they were compiling these other assessments we knew about because we started reaching out once they told us about it – to go get those. *But, that they had no other documentation that would be subject to discovery – based off this response.*

...

MAJ Fein: And so, going forward your Honor, after that Ruling and then after we re-litigated the Department of State, then we sent that and said listen, essentially as we have outlined in our memo to ODNI on behalf of NCIX, and then their response back. On 11 May the Court ruled even a draft damage assessment from the Department of State is discoverable in that form. We re-litigated that. *Does this, does this information apply to ya-all (sic)? Based off of what you have previously told us.* And at that point they said we need to have a meeting. We had the meeting within a week.

Id. The audio recording, in combination with the Government's dates in its Response, clearly show the following:

- a) The Government knew that ONCIX had a draft damage assessment as of 22 September 2011 and the Government was reminded of that fact on 6 March 2012;
- b) The Government misrepresented to the Court whether ONCIX had a damage assessment by stating "ONCIX has not produced any interim or final damage assessment in this matter." This statement was cherry picked from a longer message from ONDI/ONCIX that explained that while ONCIX had not completed an interim or final report, it did have a draft damage assessment.
- c) The Government further misrepresented at oral argument that it had "no clue" that ONCIX had a draft damage assessment at the time it made its 22 March 2012 representation to the Court.

53. In short, the Government has tried to cover up its misrepresentations with even more misrepresentations. It is truly disheartening that the Court and the Defense cannot believe anything the Government says. These are the basic facts that the Government simply cannot dispute.

54. Another fact that the Government cannot dispute is that it became aware that ONCIX was preparing a damage assessment in February 2011. In fact, it claims at that time to have "requested authority to review the ONCIX damage assessment." *See* Government Response, p. 73. Fast-forwarding past all the misrepresentations, it was not until 23 August 2012 that the Government, after a protracted battle to discover whether ONCIX even had a damage assessment, disclosed the damage assessment to the Defense. That is a total of 569 days. Especially when contrasted with the mere 20 days it took for the Government to review the ONCIX damage assessment and arrange to have it produced to the Defense, the 569 day number is unfathomable. Had the Government exhibited even a modicum of diligence with respect to ONCIX, the Defense would have had this information (and this case could have gone to trial) much sooner.

55. If these were the only misrepresentations in the Government's account of what happened with ONCIX, that, in itself, should be grounds for censure. However, there are countless more misrepresentations to the Court that stem from the pile of misrepresentations discussed above.

b) MAJ Fein Misrepresented That He Simply Relayed What He Was Told by ONCIX

56. The Court was, rightly, not satisfied with the Government's account of what happened with ONCIX. The Court asked MAJ Fein about why he made the representation to the Court that he did in light of his admission in oral argument that he knew ONCIX was charged with completing a damage assessment. MAJ Fein repeatedly fell back on some variation of, "that's what ONCIX told us, and that's what we told you."

MAJ Fein: And then their response of course given was the department of, ONCIX has not completed a damage assessment – to date they have not produced any interim or final damage assessment in this matter. *That is what they gave us and told us.*

...

MAJ Fein: ... And so, by us writing that down, and inquiring is this all you have, is this what it is? *And this is the response we received.* That is ultimately what we – fast forward, at the motions hearing, on the record, both at the 802 conference after the motions hearing, and on the email inquiry on 21 March, when asked. As you will notice from the Court's motion to compel discovery dated 23 March 2012, the Court documented the email questions and those email questions were does the damage assessment essentially exist with ODNI, or excuse me with ONCIX. And we responded in an email ONCIX has not produce any interim or final damage assessments in this matter. *We asked them the questions. We don't have any other access to their files. They answered it. So, at that point we relayed that to the Court, we relayed it to the Defense and the Court ruled.* Then

—

...

MAJ Fein: We asked questions, we give them the relevant cases, the case law, we show them the discovery requests and any other orders. *And then they give us the answer.* Or give us access and we go search them for the answer. *And in this case, they gave us the answer. We relayed that to the Court.*

...

MAJ Fein: Yes, your Honor, we did. And we were told that they were compiling the documents to do a damage assessment. *We asked what is the status of the damage assessment so that we can relay it to the Court and this was the exact wording we were given.*

...

MAJ Fein: ... We inquired into what documentation they had, that we could report on whether they have a draft damage assessment. *And they reported back again, to date ONCIX has not produced any interim or final damage assessment in this matter, when we asked them the question.*

...

MAJ Fein: So we did have discussions with both entities on what the differences could be, but at the end of the day we asked "do you have any documentation or do you have a damage assessment, and if not, what do you have?" *And these were the responses that we were given and that we relayed to the Court.*

Article 39(a) Audio Recording 6 June 2012 (emphases supplied). MAJ Fein stated on six separate occasions that he simply repeated the answers that he was given by ONCIX. What he failed to state is that he repeated only *a portion* of the answer that was given by ONCIX – the portion which, in isolation, is misrepresentative of the documentation that ONCIX had in its possession and that the Government *knew* ONCIX had in its possession.

57. Moreover, the six separate submissions above convey the impression that MAJ Fein had absolutely no idea that ONCIX had a draft damage assessment and that he was attempting, to no avail, to determine what ONCIX had by way of a damage assessment. As indicated above, MAJ Fein knew on 22 September 2011 that ONCIX had a "working draft." Clearly, these earnest conversations with ONCIX that MAJ Fein told the Court about, where he tried in vain to figure out what ONCIX had in terms of a damage assessment, did not take place. Again, more misrepresentations to cover up the original misrepresentations.

c) MAJ Fein Misrepresented that ONCIX's Communication Was Oral

58. The Court, in attempting to figure out what happened with ONCIX, asked MAJ Fein a pointed question – how did ONCIX make the representation to you that they had not produced any final or interim damage assessments in this matter?

59. The dialogue between the Court and MAJ Fein reads:

MAJ Fein: And then their response of course given was the department of, ONCIX has not completed a damage assessment – to date they have not produced any interim or final damage assessment in this matter. That is what they gave us and told us.

COURT: Did they do that orally or in writing?

MAJ Fein: *Orally your Honor.* And so, by us writing that down, and inquiring is this all you have, is this what it is? And this is the response we received. That is ultimately what we – fast forward, at the motions hearing, on the record, both at the 802 conference after the motions hearing.

Id. In its Response, the Government states that on 6 March 2012, the prosecution received a response from ODNI on behalf of ONCIX with the statement, *inter alia*, "ONCIX has not produced any interim or final damage assessment in this matter." Government Response, p. 29. The Response shows that the communication from ONCIX was written, not oral, as MAJ Fein claimed.

60. MAJ Fein will undoubtedly claim that he forgot that the communication was written. Any such claim, however, should be viewed with suspicion. MAJ Fein appeared to recall the conversation (that didn't happen) with ONCIX with remarkable clarity. He stated that the communication was oral and that the Government "[wrote] that down, and inquir[ed] 'is this all you have, is this what it is?'" *Id.*

61. The reason that MAJ Fein stated the communication was oral is obvious: because that way, no one would be able to prove it didn't happen. He did not count on the fact that there would ultimately be a day of reckoning for the multitude of misrepresentations, half-truths and omissions.

d) MAJ Fein's Misrepresented That the Government Double-Checked with ONCIX After Receiving the Court's Questions

62. At oral argument, MAJ Fein stated that after the Court sent the email questions on 21 March 2012, it reached out to ONCIX again on this issue prior to responding on 22 March 2012:

MAJ Fein: Yes, your Honor. And the prosecution did exactly that, your Honor. *Even after the email from the Court, the prosecution reached out to ODNI and NCIX to ask the question again and this was the response we received.*

Id.

63. The Government's Response does not refer to this communication with ONCIX/ODNI on 21 or 22 March 2012. Nor does the Government's 230 page Chronology.¹¹ Again, the

¹¹ All the Government's entries for 21-22 March 2012 are reproduced below:

21-Mar-12 Wed Email with DOS-request to disclose IRTF assessment of DOS equities

21-Mar-12 Wed Email with OGA1-prosecution sent copy of other Agencies' information for review and consent to disclose

21-Mar-12 Wed leave (Wife Surgery)

21-Mar-12 Wed Motions practice to include research and drafting

21-Mar-12 Wed Phone call with DOJ

21-Mar-12 Wed Phone call with DOS for discovery meeting concerning damage assessment and prudential search request

21-Mar-12 Wed UCMJ v Commissions research

21-Mar-12 Wed Worked on Speedy Trial Tracker

22-Mar-12 Thu Email from VA with response to request

22-Mar-12 Thu Email with BBG to request update on research for discoverable material

22-Mar-12 Thu Email with DA-discussed obtaining defense access to NWC

22-Mar-12 Thu Email with FBI-prosecution sent other Agency's information for review by FBI in order to produce in discovery

22-Mar-12 Thu Email with NASA received portion of damage assessment via email

22-Mar-12 Thu Email with OGA2-requested review for OGA2 equities

22-Mar-12 Thu Email with VA-received damage assessment

22-Mar-12 Thu Evidence research

22-Mar-12 Thu From BBG OGC- Stated they are still trying to track down their copy of the assessment

22-Mar-12 Thu From NRC- States that OGC point of contact was out of the office due to a death in the family and will be back next week

Government appears to have misrepresented to the Court that it had communication with ONCIX after it received the questions from the Court on 21 March 2012 and prior to responding to the Court on 22 March 2012.

e) MAJ Fein's Misrepresented What Happened After the Court's Ruling on 11 May 2012

64. At oral argument, MAJ Fein stated that it was after the Court's Ruling on 11 May 2012 regarding the discoverability of the Department of State damage assessment that he felt compelled to go back to ONCIX to get ONCIX to reassess its position:

MAJ Fein: ... So, so the Government's position isn't that we didn't know that they weren't in the process of creating a damage assessment, but we were unaware that they had any other documentation created that would even qualify as a draft. Once we received the Court's Order on 11 May, we had them relook and reassess and that is when we started this process.

...

MAJ Fein: ... the prosecution had no clue, we had to rely on what they were told, or what we were told. And then we remedied it the moment we realized that, that, we attempted to remedy it once we realized, and asked them to reassess their position based off the Court's Order of 11 May. But they had to come back to us to say "yes, what we read actually means we have something like that. Not what necessarily we told you before." Of course, everything changes as time goes on. So, once they told us, we then went through the procedures and we are here.

...

MAJ Fein: And so, going forward your Honor, after that Ruling and then after we re-litigated the Department of State, then we sent that and said listen, essentially as we have outlined in our memo to ODNI on behalf of NCIX, and then their response back. On 11 May the Court ruled even a draft damage assessment from the Department of State is discoverable in that form. We re-litigated that. Does this, does this information apply to ya-all (sic)? Based off of what you have previously told us. And at that point they said we need to have a meeting. We had the meeting within a week.

Article 39(a) Audio Recording 6 June 2012 (emphases supplied).

65. Clearly, and in light of the fact that the Government had actual knowledge that ONCIX had a "working draft" on 22 September 2011 and a "draft" on 6 March 2012, these conversations did not take place as MAJ Fein claims they did. The Government did not go back to ONCIX to inquire as to whether ONCIX had a draft damage assessment. The Government *knew* that

22-Mar-12 Thu leave (Wife Surgery)

22-Mar-12 Thu Motions practice to include research and drafting

22-Mar-12 Thu Phone call with CCIU

22-Mar-12 Thu Phone call with NSF to inquire about any discoverable material

ONCIX had a draft damage assessment. What the Government went back to ONCIX with was the Court's ruling that the draft damage assessment (about which it had known for approximately 8 months) was discoverable. MAJ Fein, however, had to continue to tell the elaborate and fanciful story that he had weaved to the Court, so as to convince the Court: a) that he had not made any misrepresentations; and b) that the Government had been diligent all along. Nothing could be further from the truth.

2. The Government Was Not Diligent in Obtaining Damage Assessments from the 63 Agencies

66. The Government concedes that the speedy trial clock began on 27 May 2010 when the accused was placed under pretrial restraint. The Government admits that its first meeting with ONCIX was not until 2 February 2011, 251 days later. The Government provides no explanation of why it was not in contact with ONCIX, an apparently closely aligned agency, any earlier.

67. On 18 February 2011, ONCIX informed the Government that it would not be able to turn over the individual damage assessments it had received from the agencies it had contacted and that "approval from the other government organizations was necessary, since many of the individual assessments were classified." See Government Response, p. 28. Apparently, after this communication, the Government tried for over *one full year* to figure out a "system" to obtain these very short damage assessments before it had the brilliant idea to ask a paralegal to track them down. It was not until 27 February 2012, some 374 days after it was informed that ONCIX could not turn over these damage assessments that the Government, in a moment of sheer genius, figured out how to obtain them. The paralegal then tracked down these damage assessments in approximately one month.

68. It is clear that if the Government had exercised even a modicum of diligence, these damage assessments could have been provided to the Defense in March or April of 2011, not over one year later. The Government can point to no justification – other than its own ineptitude – to explain the ridiculous time lag in obtaining these very short damage assessments from individual agencies. The only "explanation" for such a time lag is that the damage assessments revealed that little to no damage was done to any agency of the U.S. Government – and, of course, the Government has not been in any hurry to turn over any of that sort of information to the Defense.

69. The above dates are taken directly from the Government's motion and are the key dates in assessing the Government's lack of diligence from a big-picture perspective. However, as with most of the Government's submissions, things simply do not add up with respect to the rest of the story. The following highlights the various residual inconsistencies and gaps in the Government's story:

- Apparently, the Government didn't receive the contact information for the various agencies until 14 October 2011, but the Government claims that it attempted to contact the different organizations on 11 October 2011. *Id.* at p. 28-29. How could the Government have contacted these agencies without their contact information? If the Government did indeed have their contact information, why did it not contact them earlier?

- The Government's meetings and communications with ONCIX were seemingly repeats of one another. On 18 February 2011, "the prosecution sought assistance from ONCIX to retrieve the individual damage assessments of those government organizations from which ONCIX requested input. ONCIX advised the prosecution that approval from the other government organizations was necessary, since many of the individual assessments themselves were classified." *Id.* at p. 28. Approximately 5 months later, the Government and ONCIX had made no progress on this point. On 14 July 2011, "ONCIX notified the prosecution that it would need authorization from the other government organizations to retrieve those organizations' individual assessments." *Id.* How can it be that after 146 days, absolutely no progress was made on this front and that the Government was still at Square One?
- The Government claimed in oral argument that it only found out in February 2012 that it needed to go to the agencies directly, rather than go through ONCIX to obtain the damage assessments. This is wholly inconsistent with its new position in its Speedy Trial motion where it indicates that it knew in 2011 that it had to retrieve the damage assessments from the individual agencies and that it began the process of retrieving those damage assessments "on or about 1 November [2011]." *Id.* at p. 29. At the 6 June 2012 motions argument, MAJ Fein stated that it was in February 2012 that he learned he would have to go to the individual agencies:

MAJ Fein: ... The NCIX as explained in the Government's filing to explain the difference between assessments and investigations. The NCIX is chartered to do a national level, national counterintelligence review – a damage assessment at a national level. That's what their – what the counter espionage act, excuse me, what the counterintelligence act set up. We briefed that in our filing. That is their charter. They do it government wide. They receive inputs from different government organizations. What Mr., excuse me, what the Defense has already referenced and we have already produced to the Defense are different entities that have submitted their information to NCIX. We have not reviewed any document that belongs to NCIX. Period. *What we have done is, we have gone to the originator, the owner of the information that was submitted to NCIX. The original entities, to request approval to review their material, and if discoverable, turn it over to the Defense. And that is what the Defense has been receiving.* Specifically, the ultimate source your Honor of these documents is not NCIX. The source of the documents that the Defense is receiving in discovery are the actual agencies. *So as mentioned earlier on the record today, the Department of Agriculture or the, or any of the executive departments that the Defense has received, those organizations independently did their own and submitted those.* We have gone to those agencies for efficiency purposes. We have acquired the documents, or attempting to finalize acquiring all of the documents. And then once we obtain them or review them get approval to turn them over if discoverable and give them to the Defense immediately once we get that approval.

...

MAJ Fein: Correct your Honor. It is our belief, at that point [February 2012], that they were compiling these other assessments *we knew about because we started reaching out once they told us about it – to go get those*. But, that they had no other documentation that would be subject to discovery – based off this response. So, yes we did know that their individual organizations were submitting theirs, and *that is why we went out to those independent organizations to get them approval and disclose them*.

Article 39(a) Audio Recording 6 June 2012 (emphases supplied). As is clear from the above passage, MAJ Fein states he became aware that ONCIX had received inputs from various agencies in February 2012, and it was at that point that the Government began reaching out to these different agencies. (“we knew about [these other agencies] because we started reaching out once they told us about it – to go get those.”; “So as mentioned earlier on the record today, the Department of Agriculture or the, or any of the executive departments that the Defense has received, those organizations independently did their own and submitted those”). *Id.* Indeed, this is confirmed in an email from SGT Bradley, a paralegal for the Government, to the EPA. SGT Bradley writes on 27 February 2012:

I am a paralegal for the prosecution team in the Court-Martial of Private First Class Bradley Manning in connection with “W#kileaks.” The purpose of this email is to request a copy of all documents your organization provided to NCIX approximately one year ago. Although we have been coordinating with NCIX/ODNI for the past year, *just two weeks ago they determined that we cannot review copies of your organization’s documents in their possession, and we must directly go to your organization to coordinate a review.*

See Appellate Exhibit 173.

The Government knew in 2011 that it had to go to the individual agencies directly (indeed it claimed to have begun the process in November 2011) – and yet it represented to the Court and the Defense in oral argument that it learned in February 2012 that it had to go to the agencies directly. The Government has told so many falsehoods that it is having trouble keeping its stories straight. The Government, of course, told such falsehoods in order to create the illusion of diligence (i.e. “We didn’t know until February 2012 that we had to go to the individual agencies and when we found out, we did that immediately.”). However, when one looks at the dates the Government has presented to the Court and the representations it had made, one sees that the reality is otherwise than presented by the Government.

- The Government claims that on or about 1 November 2011, it “the prosecution began to reach out to individuals on the ONCIX contact list in order to obtain copies of the damage assessments.” *Id.* at 29. The Government provides no proof of this. If this actually happened, where were these damage assessments? Why was there a need to have a paralegal re-reach out to these same organizations in February 2012? Moreover, it

is impossible to reconcile the Government's timeline with its representation at the first 802 session in February 2012 that it had contacted these agencies and had received no *Brady* information from them. In short, the timeline that the Government has presented does not make sense:

1 November 2011 – Government reaches out to individual agencies to obtain damage assessments. Unclear which agencies the Government contacted and what the response was.

23 February 2012 – Government represents that it has already reached out to individual agencies and found no *Brady* material.

27 February 2012 – Government tasks a paralegal to reach out to agencies that it has apparently already contacted.

March-onward – Defense begins receiving damage assessments/*Brady* from each of the agencies that the Government purported to have contacted in November 2011 that apparently had no *Brady* material.

In particular, the Government had represented at an 802 session on 23 February 2012 that the Government had reached out to the Department of Agriculture as part of its *Brady* search and found nothing. Article 39(a) Audio Recording 23 February 2012, (unauthenticated record of trial at p. 39). See Transcript at p. 106 (“Mr Coombs: Even going so far as going to the Department of Agriculture to see if they had potential information there. And then they stated; and they even state it here, that they have not found any *Brady* material.”). The Court summed up the 802 session for the record as follows:

MJ: The government advised the Court that although it has been extensively engaged in evaluating executive branch and sub-branch files for discoverable information prior to referral, the government's due diligence obligations under the *Brady Williams* case law; duty to find, evaluate and disclose favorable and material evidence to the defense will take additional time because of the need to cull through voluminous classified and unclassified information contained throughout executive branch [and] sub-branch agencies that have been involved in the classified information disclosure investigations.

Id. at p. 38. The Defense added the following:

Mr. Coombs: Just that the when government spoke about its *Brady* search they stated at that time they had not found any *Brady* material even though they had looked for over a year.

Id. at p. 39. Even though the Government claimed on February 23 2012 that it had already searched the Department of Agriculture and found nothing, the very next day, the Government “email[ed] ... the Department of Agriculture to inquire about any

discoverable material.” See Chronology. Then on 30 March 2012 the Government states that it “retrieved classified response from Department of Agriculture and subsequently disclose[d] it to the defense.” *Id.* How could the Government have represented that it had contacted the Department of Agriculture as of 23 February 2012 and that the Department of Agriculture did not have any discoverable material, but then contact the Department of Agriculture the very next day and ultimately disclose discoverable material from the Department of Agriculture a couple of months later?

- If it is true that the Government began reaching out to agencies in November 2011, some ten months after being in touch with ONCIX, why was there a three month lag between that time and the time it put in place its revolutionary paralegal idea? This, of course, begs the question of *who* exactly was contacting agencies in November 2011.

70. There are so many holes in the Government’s story, that it will be impossible for the Government to now plug them all. The bottom line is that the Government waited for well over a year to collect damage assessments from the 63 agencies which it knew were favorable to the Defense in the hopes that it would never have to produce them. The actual collection process ended up being only a month or so, according to the Government’s Response. Now, after the fact, it has woven a fictional account of what happened with these damage assessments to convey the impression that it had been diligent all along. In reality, had the Government exercised reasonable diligence, these damage assessments would have been produced almost a year ago (i.e. in April or May of 2011).

3. The Government Was Not Reasonably Diligent in Producing Discovery from the FBI, the Organization that Jointly Investigated the Accused

71. Much like with ONCIX and the 63 agencies, the Government dragged its feet on producing the FBI investigative file and related discovery from the FBI (in particular, an “impact statement” that it hid from the Court and the Defense). The investigative file and the impact statement will be discussed, in turn:

a) The Government Did Not Exercise Reasonable Diligence in Producing the FBI Investigative File to the Defense

72. According to the Government’s Response, the FBI agreed to participate in a joint investigation of the accused on or about 30 July 2010. See Government Response, p. 6. The Government waited until 19 April 2011 to request approval to disclose to the defense the FBI case file and its sub-files. *Id.*, p. 22. Apparently, the Government made two other duplicative requests on 28 July 2011 and 15 August 2011. It is unclear why the Government had to make three requests for the same thing. Leaving this issue aside, it was not until 1 February 2012 that the Government “completed its review of the FBI file related to the accused.” This is a total of 288 days. While the FBI file related to the accused was undoubtedly large, there is no explanation as to why it took five prosecutors nearly *one year* to review the file.

73. The Government claims that after reviewing the file, on 7 February 2012, it “began extensive negotiations with DOJ and the FBI to disclose all requested information to the

defense.”¹² The Government then states, “The FBI would not approve disclosure to the defense, absent a military judge to issue a Protective Order.” See Government Response, p. 22. The Government includes a citation to Unclassified Email 0451. The email is dated 5 May 2011, nine months *prior* to the Government even reviewing the FBI file and engaging in “extensive negotiations” with the FBI as to whether the FBI would consent to disclosure of its case file. The email, from someone at DOJ, is entitled “CID Case File and Update” and reads as follows:

Hi Ashden/Joe,

Thanks for the update and the disks. Andy and I have taken a preliminary look and wanted to give you advance notice of some potential concerns that we have with some of the items on the unclassified disk, as follows: [redacted]

That’s it for now. But I think it’s fair to say we will likely need an extension from Monday May 9 to complete the review and obtain all necessary court orders.

74. The reference to “completing the review and obtaining all necessary court orders” refers to whatever task the FBI/DOJ was asked to complete by 9 May 2011.¹³ Apparently, that task involved potentially obtaining a court order. This “court order” must have referred to some sort of civilian court order, since there was no order from a military judge that could have been obtained in May 2011, the time frame contemplated by the email (a military judge was not detailed to this case until February of 2012).

75. The email does not, by any stretch of the imagination, say that the FBI refuses to disclose information to the accused absent a military judge’s protective order. First, the email does not refer to a “military judge” or a “protective order.” Second, the email was drafted nine months *prior* to discussions about whether the FBI file would be disclosed to the accused. Third, something as important as the FBI refusing to disclose information to an accused absent a military judge’s protective order would not be casually referenced as a throwaway line after “That’s it for now.” Presumably, there would be some formal memorandum from the FBI indicating that it would not consent to disclosure unless the information was subject to a military judge’s protective order (and presumably, this memo would be prepared in February 2012, pursuant to the “extensive negotiations”). Fourth, the email is entitled “CID Case File” which seems to suggest that this doesn’t even deal with the FBI investigative file. Fifth, this apparently important communication is not even referenced in the Government’s chronology/time sheets; one would expect something as significant as the FBI refusing to disclose documents absent a military judge’s protective order would be at least as important as the 5 May 2011 entry “worked on fixing issues with courtroom equipment.” See Government Chronology. Finally, there is an email from MAJ Fein on 11 May 2012 that appears to be part of the same email chain as the 5 May 2011 email (the subject line is “CID Case File and Update”). In this email, MAJ Fein writes:

¹² The Government cites “Enclosure 1” for this proposition. Enclosure 1 spans many hundreds of emails, so it is not clear what the Government is referring to.

¹³ Based on Government Response, Enclosure 1, Unclassified Email 0465, it appears that the task was to do an “initial scrub of CID’s files for [FBI] equities.” See also Unclassified Email 0452.

Thank you again for the review of the CID files ... Joe and Angel are going to coordinate with [redacted] to finish scrubbing the FBI files, and then we will put together our 'wish list' of the documents we would like authorization to use and/or turn over in discovery. Ideally, in the coming weeks, we will have a comprehensive list of all documents in all investigative files (CID, FBI, and DSS), that we would like to seek approval for use during discovery and will present the list to all for input and potential for follow-on action (e.g. requesting a modification of sealing orders).

See Government Response, Enclosure 1, Unclassified Email 0465. It is clear from this email that the Government has not yet reviewed the FBI investigative file, much yet prepared its 'wish list' for discovery. If that is the case, how could the email from 6 days *prior* be read to suggest that the FBI will not disclose documents (yet to be reviewed and requested) absent a military judge's protective order?

76. In short, the Defense does not believe that the FBI had a "prerequisite" that a military judge issue a protective order prior to the FBI consenting to disclosure. See Government Response, p. 22. At the very least, this email does not say anything close to what the Government says it does. The Defense believes that the Government needed to find a way to hide its lack of diligence in disclosing the FBI investigative file so late in the game. It was not until 21 May 2012 that the Government apparently disclosed the entirety of the FBI's investigative file to the Defense. To put this in perspective, the Defense received the FBI investigative file – an elemental aspect of discovery – nearly *two full years* after the accused was placed in pretrial restraint. In order to explain its failure to provide the investigative file sooner, the Defense believes that the Government searched its emails from the FBI and DOJ to find the expression "court order" and then claimed that this email says something that it does not – that the FBI did not consent to disclosure absent a protective order specifically issued by a military judge.¹⁴

b) The Government Hid the Existence of the FBI Impact Statement From the Court and the Defense

77. The Government revealed for the first time on 31 May 2012 that it had "discovered" that the FBI had prepared a damage assessment (what it called an "impact statement"). In Appellate Exhibit CI (Defense Reply to Prosecution Response to Supplement to Defense Motion to Compel Discovery #2; Defense Motion for Modified Relief), the Defense argued:

Second, the Government casually mentions that it "discovered that the FBI conducted an impact statement, *outside of the FBI law enforcement file*, for which the prosecution intends to file an *ex parte* motion under MRE 505(g)(2)." Government Response to Supplement, p. 4. What does the Government mean that it "discovered" that the FBI conducted an impact statement? The Government and the FBI engaged in a joint investigation of the accused and are closely aligned. The Defense has repeatedly asked for documents from the FBI; moreover, the Government has a duty to turn over *Brady* even in the absence of a

¹⁴ It is important to note that a protective order was already in place. The Government, however, is claiming that this protective order was not sufficient for the FBI and that the FBI was seeking, in May 2011, a protective order from a military judge who was yet to be detailed – and who would not be detailed for another 9 months.

Defense Request. See Government Response to Supplement, p. 6 (“The prosecution shall, and will, disclose Brady ... even in the absence of a defense request.”).

On 20 January 2012, the Defense made the following discovery request: “Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items.” See Attachment L to Appellate Exhibit VIII at paragraph 3(b). On 31 January 2012, the Government responded: “The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.” Attachment N to Appellate Exhibit VIII, paragraph 3(b).

Apparently, despite the Defense’s discovery request, the Government did not disclose the existence of the FBI impact statement in January. When was the impact statement prepared? Why is the Government only now “discovering” its existence, as if by happenstance, three months before trial? Presumably, the impact statement is something that has been in the works for a while. In other words, the FBI impact statement did not just magically appear out of thin air. Why has the Government not disclosed its existence to the Defense or to the Court? This latest revelation by the Government shows that the Court and the Defense are left completely in the dark about relevant documents that exist in closely aligned agencies until the Government decides, at its convenience, to confirm or reveal their existence. Further, the Government states that it intends to produce any *Brady* material “as soon as possible; however, the current case calendar outlines MRE 505 proceedings to take place a future date.” Government Response to Supplement, p. 4. The subtext of this statement is that it will be months before the Defense gets access to the FBI’s impact statement.

Id. p. 10-11.

78. At oral argument on 6 June 2012, the Court asked MAJ Fein *when* the Government learned about the FBI impact statement.

COURT: Alright, we will be addressing that aspect of this motion at the next session. I understand the Defense’s argument. Government, are you prepared to tell me when you did know about this impact statement or impact assessment?

MAJ Fein: Your Honor, the Government would like to at least have a chance to argue the due diligence argument first and then answer that in (inaudible) Court’s order.

Article 39(a) Audio Recording 6 June 2012. MAJ Fein seemed to indicate that he would provide an answer to the Court's very straightforward question as part of the Government's due diligence submission, for which he had requested a two-week extension. MAJ Fein did not address the FBI impact statement *at all* in the Government's 20 June 2012 submission. The Government also conveniently omitted any reference to the FBI impact statement in its Response to the Defense Motion to Dismiss for Lack of Speedy Trial.

79. However, in the Government's 230-page Chronology, the Government indicates that it sent a request to review any FBI damage assessment on 6 October 2011 and that it reviewed the FBI impact statement on 2 November 2011 ("Email with FBI-sent impact statement"; "Prosecution initially reviews FBI impact statement"). It is clear that the Government knew about the existence of the FBI impact statement at some point prior to 6 October 2011 (though it is not clear when the FBI completed the impact statement or when the Government first learned of the impact statement).

80. And yet, despite knowing about the FBI impact statement since at least 6 October 2011, the Government waited until 31 May 2012 to disclose its existence to the Defense and the Court. In other words, it took the Government a mind-boggling 238 days to even *tell* the Court and the Defense that the FBI had prepared an impact statement. And, in so doing, the Government made it look like it was *just now* "discovering" the existence of the impact statement. *See* Appellate Exhibit 100, p. 4 ("The prosecution further requested that the FBI search its entire records for information relating to any damage resulting from the charged offenses. The prosecution discovered that the FBI conducted an impact statement, outside of the FBI law enforcement file, for which the prosecution intends to file an *ex parte* motion under MRE 505(g)(2)."). The Government provides no date for when the FBI prepared this statement and for why it took the Government 238 days to disclose its existence to the Court and the Defense.

81. And, because the Government sought substitutions for some of the information that it had been sitting on for 238 days, it was not until 19 July 2012 that the Court approved the Government's motion for substitutions and until 2 August 2012 that the Government provided the Defense with a copy of the court-approved substitutions. In short, it took over *nine months* from the time of the Government's review of the impact statement to get the impact statement (or a variation thereof) to the Defense.

4. The Government Did Not Exercise Reasonable Diligence in Producing Discovery from the Department of State

82. As if all the above weren't enough, the Government moved at a snail's pace with respect to discovery from the Department of State. This, of course, is not surprising given what appears to be the Government's *modus operandi* with respect to the Department of State: "Let's use the information that's favorable to the Government for our purposes, but let's resist producing anything of benefit to the Defense." The Defense will separately address the Department of State damage assessment, general discovery from the Department of State, and the Department of State's complicity in denying PFC Manning his right to discoverable material and witnesses.

a) Department of State Damage Assessment

83. The Defense made numerous discovery requests for the Department of State damage assessment. The Government refused to provide the Department of State damage assessment to the Defense. The Government, in fact, refused to acknowledge that the Department of State was even working on a damage assessment (the Government referred to the damage assessment as “alleged”) despite having submitted a request to the Department of State on 6 October 2011 to view the damage assessment and despite public proclamations from the Department of State that it was conducting a damage assessment.

84. The Government, in response to the Court’s questions on 21 March 2012 as to whether the Department of State had a damage assessment indicated that “the Department of State has not completed a damage assessment.” Because the Court and the Defense had knowledge that the Department of State had *something* (if not a “completed” damage assessment), the Court ordered production of the Department of State damage assessment on 23 March 2012. The Court should not overlook the fact that the expression “the Department of State has not completed a damage assessment” was given by the Government to the Court at the behest of the Department of State, and was designed (much like the ONCIX statement) to convey the impression that the Department of State did not have anything that was discoverable.

85. It was not until 18 May 2012, almost one year after it was prepared, that the Defense was granted access to the Department of State damage assessment. The Government provides no explanation for this time lag and why the damage assessment – a facially relevant document that the Government had requested to review on 6 October 2011 – was disclosed at such a late date.

b) The Government Did Not Exercise Reasonable Diligence in Fulfilling its *Brady* Obligations with Respect to the Department of State

86. On 25 May 2011, the Government submitted a prudential search request to the Department of State, asking it to preserve and locate certain documents related to PFC Manning and WikiLeaks. The Government provides no explanation as to why this discovery request was made of the Department of State (not to mention other key agencies) *one full year* after PFC Manning was placed in pretrial restraint. Clearly, the Government knew that the Department of State would be a big part of this case. Why did it wait one year to get the Department of State involved in the discovery process?

87. Once the Government submitted the prudential search request to the Department of State, the request then simply fell by the wayside for *more than another full year*. It was not until 28 June 2012 that the “DOS finishe[d] gathering and consolidating information responsive to the prosecution’s prudential search request.” See Chronology. That is a total of 400 days for the Department of State to “gather and consolidate” documents. The Government has provided no explanation – much less a satisfactory explanation – for why it took the Department of State 400 days to process the discovery request. Notably, 400 days is more than three times the length of time that R.C.M. 707 provides for an accused to be brought to trial.

88. Interestingly, while the *Brady* search was on the back burner (i.e. not being completed with any degree of haste), the Department of State was providing evidence to the Government to help

with the Government's case-in-chief. The Government's chronology refers to the following activities that occurred after the Government submitted its prudential search request to the Department of State:

- 10-Aug-11 Tue – received valuation evidence
- 19-Aug-11 Fri Meeting-with DOS to discuss sentencing
- 13-Oct-11 Thu Request for Valuation Evidence (DOS)
- 19-Oct-11 Wed Email with DOS-requested valuation evidence
- 20-Oct-11 Thu Email with DOS- received notification that request for valuation evidence was being processed
- 2-Nov-11 Wed Email with DOS-request to disclose damage in slides
- 28-Nov-11 Mon Email with DOS-received valuation evidence
- 2-Dec-11 Fri Email with DOS- received valuation evidence

See Chronology. It is clear that when it came to the Government proving its case – in particular in advance of the Article 32 hearing – it routinely followed-up with the Department of State to ensure that it had all the information it needed. And the Department of State readily complied with Government requests for assistance (e.g. it took only a month for the Department of State to get the Government valuation evidence for the Article 32 hearing). For the Article 32 hearing, the Defense did not have *one document* (aside from the charged documents) from the Department of State.¹⁵

89. Once the Department of State finally produced the relevant documents to the Government, the Government was able to review them in *less than three weeks* (“11-Jul-12 Wed Prosecution completes review of DOS records responsive to Court ruling”). It then took another 65 days for the Government to coordinate with the Department of State to actually produce these documents to the Defense. If the Department of State had actually produced these records in a timely manner, the Defense would have had these documents over one year ago – not one month ago. No explanation has ever been provided for the inordinate amount of time that elapsed in submitting a prudential search request and in the Department of State responding to a prudential search request (or, for that matter, for the inordinate delay of the Government in even submitting a prudential search request).

90. The diligence, or lack thereof, of other agencies is highly relevant to evaluating speedy trial rights. *See United States v. Kuelker*, 20 M.J. 715, 716-17 (N.-M. Ct. Crim. Rev. 1985) (“[T]he need to obtain crucial evidence in the custody of another agency of the United States is a common problem and therefore associated delay does not qualify for exclusion from the 120-day rule as a ‘delay for good cause.’”). Otherwise, a prosecution could drag on for years – or even decades – by “blaming” the delay on entities outside of the prosecution team. Even with the most diligent prosecutor, asking for updates and attempting to speed up the process on a daily basis, one could have a speedy trial violation if the case as a whole was not moved along at a

¹⁵ As evidence that the Government was simply perfecting its case at the expense of the Defense prior to the Article 32 hearing, *see* Government Response, p. 79 (noting that in November 2011, “the prosecution presented its case, specifically how it intended to prove the charges and what damage, if any, the accused’s misconduct has caused.”). What the Government is saying is that it kindly shared its case with the Defense, while refusing to provide the Defense with even a scintilla of evidence to be able to use to rebut the charges.

diligent pace. In short, the lack of diligence of individual entities is imputed to the Government for speedy trial purposes.

91. In *United States v. Pyburn*, 1974 WL 13919 (C.M.A.), the Court of Military Appeals found a violation of the accused's speedy trial rights where there was an "unexplained slowness of another agency in analyzing and returning evidence." The Court stated:

Even where the prosecution does not exercise any direct control over the facility where evidence is analyzed, the duty of speedily trying the accused cannot be set aside by the unexplained slowness of another agency in analyzing and returning evidence. The 62-day delay associated with the laboratory analysis in this case was not a "really extraordinary circumstances" justifying the failure to try the accused within 90 days.

Id. at *180 (emphasis supplied). If 62 days constitutes a period of "unexplained slowness" in *Pyburn*, what are we to say about 400 days? The Department of State did not respond to the Government's prudential search request for 400 days – and it appears that the Government was in no haste to have the Department of State do so. The lack of diligence of the Department of State is ascribed to the Government for Speedy Trial purposes.

c) The Department of State was a Willing Partner in Impeding PFC Manning's Speedy Trial Rights

92. The Department of State was the Government's willing partner in impairing PFC Manning's right to a speedy trial, his rights to discovery under R.C.M. 701 and his right to equal access to witnesses under Article 46, UCMJ. It is clear that the Department of State has been feeding the Government information for its case-in-chief, while secreting discovery and witnesses from the Defense and encouraging the Government to make frivolous arguments during the course of this litigation. Below, the Defense addresses the Department of State's requirement for a *Touhy* request prior to speaking with the Defense, the Department of State's ludicrous discovery positions, and the Department of State's attempt to hide the damage assessment from the Defense. All of these are examples of extreme bad faith on the part of both the Government and its close ally, the Department of State.

The Department of State's Requirement that the Defense File a Touhy Request

93. After asking to speak with witnesses from the Department of State for approximately one year, the Defense was informed in March 2012 that it needed to file a "Touhy Request" to be able to interview and potentially depose Department of State witnesses. The Government provided no explanation as to why, almost two years into the case, the Defense was in March 2012 being informed of apparently the proper bureaucratic protocol to follow for interviewing Department of State witnesses. According to its Chronology, on 26 March 2012, the Government submitted the *Touhy* request on behalf of the Defense and assured the Defense that it would do its utmost to encourage the Department of State to process the request in an

expeditious manner.¹⁶ Despite multiple inquiries from the Defense as to the status of its *Touhy* request, the Defense has not heard a peep on the *Touhy* request in the past seven months – a total of 205 days.

94. This is particularly ironic because the Government apparently had to submit *Touhy* requests on its own to view certain damage assessments, and these *Touhy* requests were approved in two days. See Chronology (2-Apr-12 Mon Email with OPM-submitted written *Touhy* request consistent with OPM's demands to review damage assessment; 4-Apr-12 Wed From OPM OGC-Approved *Touhy* request, will make arrangements for the prosecution to receive a copy of the damage assessment). Clearly, what's good for the goose is not good for the gander. The Government had its *Touhy* request approved in 2 days and the Defense is still waiting 205 days later with no word. Equal access to witnesses under Article 46 does not include jumping through impenetrable red tape to even speak with witnesses.

95. As the Government will recall, the Government put 22 witnesses from the Department of State on its witness list. The Defense has attempted to interview these witnesses, but has not been able to do so because its *Touhy* request has not been approved.¹⁷ It is clear that *Touhy* was deliberately designed by the Government and the Department of State as a roadblock to insulate the Department of State from questioning by the Defense.

The Department of State's Attempt to Hide the Damage Assessment from the Defense

96. As the Court knows, it was yeoman's work getting the Government to finally admit that the Department of State had a damage assessment. The Government's original position (undoubtedly at the behest of the Department of State) was that the Department of State had not "completed" a damage assessment. See also Appellate Exhibit XVI, Government Response to the Defense Motion to Compel #1, p. 1 ("The United States disputes any allegation, including those relating to whether, when, and to what extent select agencies, departments and organizations reviewed the compromised information, supported by unofficial public statements."). Its position with respect to ONCIX was the same. Both of these statements conveyed the impression that the Department of State and ONCIX had nothing – i.e. that these "alleged" damage assessments simply did not exist. The Defense, by this point, knew better and that the Government was fond of playing word games. The Defense argued that the Government was likely using the word "completed" as a synonym for "finished" – as in "The Department of State has not finished completing its damage assessment." Clearly, had the Government's submission been phrased that way, everybody would have known that the Department of State had a damage assessment, but that it had not been finalized. However, the Government's language – apparently authorized by the Department of State – was calculated to create a false impression. Had the Defense simply "let it go," the Defense would not have the Department of State damage assessment (much less the ONCIX damage assessment, the DHS damage

¹⁶ Note, however, that the Department inexplicably did not receive the *Touhy* request until 6 April 2012, some 10 days later. Apparently, the Government submitted the *Touhy* request through the Pony Express.

¹⁷ On 17 October 2012, during an R.C.M. 802 Session, the Government stated that a *Touhy* request was no longer required due to the addition of the requested individuals on the Government's witness list. Besides being inconsistent with the Government's previous position regarding whether Article 46 trumps any *Touhy* requirement, the Government still fails to explain the 89 day delay between the filing of the *Touhy* request on 26 March 2012 and the Government's filing of its initial witness list on 22 June 2012.

assessment and the like). This was what the Government and the Department of State was hoping for. And this is why they had so many conversations just prior to the 15 March 2012 motions argument dealing with discovery of the Department of State Damage Assessment. See Chronology (2-Mar-12 Fri Email with DOS-discussed draft damage assessment; 6-Mar-12 Tue Email with DOS-discussed draft damage assessment; 14-Mar-12 Wed Email with DOS-discussed draft damage assessment). Clearly, at the 15 March 2012 motions argument, the Government knew that the Department of State had a “draft” damage assessment – however, its representation to the Court was only a half-truth. It was only because the Defense provided a mountain of proof, including newspaper articles, that the Court pushed the issue with the Government. The Defense should not have had to disprove the Government’s false impression.

The Department of State Intermeddled in the Instant Case By Feeding the Government Frivolous Litigation Positions

97. The Defense has argued previously that the Government has allowed the Department of State to commandeer its litigation positions. This is abundantly clear when one looks at the “Government’s” (i.e. the Department of State’s) position with respect to draft damage assessments and the discoverability of documents which pre-dated the Department of State damage assessment.

98. After the Court ruled on 23 March 2012 that the Government must produce the Department of State damage assessment, the Government and the Department of State put their heads together to come up with a way to re-litigate the Court’s ruling. They found a random quotation from a second concurring opinion from a 1967 case (*Giles v. Maryland*) and used that one sentence to craft an argument that a draft damage assessment is “speculative” and therefore is not discoverable under R.C.M. 701. However, the Government did not assert this litigation position right away. Instead, it waited until May 2011 to raise this issue. The position was so ridiculous and so unsupported in law that the Court did not ask the Defense to brief it. This, in turn, prompted the Government to contact ONCIX and DHS and ultimately to reveal to the Court that there were other draft damage assessments in existence. The Government acted in bad faith in supporting the Department of State’s position in this respect; the Government’s job is not to advance the interests of various equity holders but to litigate this case as justice requires. If the Department of State wanted to invoke a privilege, it was permitted to do so. What it is not permitted to do – and what the Government allowed to happen – is to interject itself into the legal issues and rulings in this case.

99. The Department of State’s interference did not end there. Once the Court ordered the Government to examine documents from the Department of State (over two years into the case), the Government came back to the Court asking for permission to simply exclude from discovery anything with a date that preceded the Department of State damage assessment - which would, in effect, be practically everything at the Department of State. Its basis for this request is that the information predated the damage assessment was “likely” considered by the Department of State, therefore making it cumulative. The Government’s (i.e. the Department of State) position was wholly devoid of logic. After all, the Department of State damage assessment was less than 50 pages; how could the 5000 plus pages of Department of State discovery be cumulative when

the damage assessment was less than 50 pages? That the Government even attempted to make this argument at the behest of the Department of State is yet another example of bad faith.

100. The point is that this is yet another in a long series of examples of the Government doing the bidding for other government agencies. The 2-year plus delay in the Department of State producing *Brady* discovery to the Government, followed by subsequent delays arguing the *Giles* point and the “must be cumulative point,” followed by additional time to get Department of State documents ready for disclosure reflects concerted effort by both the Government and Department of State to deny discovery to the accused and impede his right to a fair and speedy trial.

5. The Government Did Not Exercise Reasonable Diligence in Searching Its Own Files (the HQDA Memo)

101. The Defense discovered, by accident, that in July 2011, the Government had sent out a memo to Headquarters, Department of the Army requesting it to task Principal Officials to search for, and preserve, any discoverable information. This memo was sent out on 29 July 2011. See Defense Motion to Compel Discovery #2, Attachment A. According to a 17 April 2012 Memorandum for Principal Officials of Headquarters, Department of the Army, “[i]t was only recently determined that no action had been taken by HQDA pursuant to the 29 July 11 memo from DOD OGC.” *Id.* This memo clearly shows that no action had been taken by HQDA for *nine months* in response to the Government’s request for *Brady* and other potentially discoverable material.

102. The Government provides no explanation as to why it submitted a *Brady* search request to HQDA 426 days after PFC Manning was placed in pretrial restraint. Instead it focuses on trying to explain the further nine month delay in following-up with HQDA. The Government’s explanation essentially amounts to “We outsourced the *Brady* search and then forgot about it.”

103. Actually, when one looks at the Government’s “explanation,” it’s even worse than that. The Government writes:

On 25 May 2011 and again on 6 June 2011, the prosecution submitted a Prudential Search Request to DOD, which included HQDA. ... On 8 August 2011, the prosecution followed up with DOD OGC and learned the request was distributed on 29 July 2011.

See Government Response, p. 24. Essentially, what the Government is saying is that after 361 days of PFC Manning being in pretrial restraint, the Government enlisted the help of DOD to submit a prudential search request to HQDA. Apparently, submitting a prudential search request to HQDA directly would have been too arduous. Then, DOD waited over *two months* to submit the prudential search request to HQDA.

104. The Government continues:

.... On 3 October 2011, the Joint Staff notified the prosecution that it compiled all the responsive material. Between the middle of October 2011 and the start of the

Article 32 investigation on 16 December 2011, the prosecution began to process the voluminous material into its computer systems and understand what information needed to be reviewed. After realizing the Joint Staff and DOD response did not include material 1 from HQDA, *the prosecution contacted DOD OGC on 5 January 2012, who advised the prosecution to contact HQDA directly to speed up the process.*

Id. (emphasis supplied). So essentially the Government's position is that it realized in January 2012, nearly six months after submitting a prudential search request, that DOD had dropped the ball on obtaining information from HQDA. Whether DOD or the Government dropped the ball is of no moment; somebody dropped the ball and the Government is accountable for the lack of diligence for speedy trial purposes.

105. The Government then writes:

On 10 January 2012, the prosecution emailed Criminal Law Division, Office of the Judge Advocate General, United States Army (hereinafter "OTJAG") to request an update, and was informed that OTJAG needed to contact DOD OGC for the inquiry.

Id. This statement by the Government doesn't make any sense. The Government says it "contacted DOD OGC on 5 January 2012 who advised the prosecution to contact HQDA directly to speed up the process." *Id.* But on "On 10 January 2012, the prosecution emailed Criminal Law Division, Office of the Judge Advocate General, United States Army (hereinafter "OTJAG") to request an update, and was informed that OTJAG needed to contact DOD OGC for the inquiry." Wasn't the Government already told on 5 January by DOD that it had to go to HQDA directly? Why was it emailing the OTJAG instead of HQDA?

106. Then the story seems to fall apart even more:

On 2 February 2012, the prosecution again emailed OTJAG to request an update.

Id. Apparently the Government did not understand what it was being told on 5 January 2012. Why was it still emailing OTJAG when it had been told by OTJAG to go to DOD directly, and by DOD to go to HQDA directly? Couldn't this utter mess of broken telephone have been avoided by doing the only seemingly logical thing – that is, going to HQDA directly?

107. The Government continues with its tangled HQDA story in a different part of its Response:

The Deputy Staff Judge Advocate (DSJA), MDW emailed OTJAG on 6 March 2012 for an update on the status of the Prudential Search Request. On 16 March 2012, the DSJA emailed OTJAG again for an update and it was determined that OTJAG was coordinating the best method to efficiently execute the task, which had not occurred based on the OGC, DoD tasker. On 27 March 2012, on behalf of the prosecution, the DSJA, MDW emailed OTJAG with an explanation of the prosecution's discovery obligations, including the requirement to respond to the

Court by 18 May 2012 with an update of the prosecution's review of the DOD and HQDA information. On 23 April 2012, OTJAG notified the prosecution that it had started to receive responsive information.

Id. at p. 40. It seems like the Government did not get the message. It was told to go to HQDA directly, and instead chose to engage in another four months of broken telephone. Apparently, though, the Government was in no rush to get this information – information which could have been produced nearly a year earlier. Finally, on 11 May 2012, the prosecution received the HQDA information. One would think that, after all this time, the Government would have looked at the HQDA information. Not so. Instead, it waited until 30 June 2012 (i.e. 50 days later) to look at this information. Apparently, the Government completed its review in a mere 2 days.

108. Despite having approval to disclose the information since 5 June 2012 (*See* Chronology, “5-Jun-12 Tue Email with HQDA-sent signed approval for consent to disclose”), the Government waited until 2 August 2012 to disclose the HQDA discovery to the Defense. This is a total of 339 days after the original memo was sent to HQDA. What this episode shows is how fatally flawed the discovery process was. The Government could not keep track of what was going on and the right had did not know what the left hand was doing. What is unimaginable is that the Government, the DOD and the OTJAG lost track of *Brady* discovery within the Army’s own files for almost a year.

6. The Government Did Not Exercise Reasonable Diligence in Completing its Discovery Obligations of Other Closely Aligned Agencies

109. The Government indicates that it sent out prudential search requests to the various closely aligned agencies beginning in May 2011.¹⁸ Some of these requests were actually sent later; for instance, the prudential search request of the FBI was sent on 27 June 2011 and the DEA prudential search request was sent on 16 November 2011. Notably, the search requests included the request that the agencies “take all reasonable and necessary steps to *preserve* any responsive files gathered as a result of [its] search for information.” (emphasis supplied). It is nonsensical for the Government to have requested for agencies to “preserve” documents a year after they may have come into existence. Why were the preservation requests not sent to the agencies shortly after charges were preferred?

110. Moreover, the prudential search requests do not request that the agencies search for *Brady* information. Rather, the Government requested the organizations to:

“conduct a thorough and comprehensive search of its records for information which concerns or references PFC Manning and/or WikiLeaks, including certain information...which directly implicates the evidence” in this court-martial; and

¹⁸ The Government indicates that it sent out these requests “*sua sponte*” and “proactively.” *See* Government Response, p. 23, 79. The Defense is not sure what this is intended to convey. Of course the Government sent these out “*sua sponte*” – did the Government expect the Defense to submit the prudential search requests? Or the agencies to come to the Government with discovery?

- (2) “take all reasonable and necessary steps to preserve any responsive files gathered as a result of [its] search for information.”

Id. at p. 23. Nowhere in this search request is a request for *Brady* information. The Government itself realizes this, so it goes to pains to say, “The prosecution included any records relating to WikiLeaks to capture, *inter alia*, any documents that discussed damage resulting from the unauthorized disclosures.” *Id.* In other words, the Government is now trying to say that “documents related to WikiLeaks” was intended to capture documents which “discussed the damage resulting from the unauthorized disclosures.” *Id.* It is clear that the prudential search requests were not aimed at obtaining mitigating evidence which dealt with damage (or lack thereof) from the leaks. Otherwise, the Government could simply have asked for those sorts of documents, as it did after it realized in April of 2012 that nobody had acted on the HQDA memo. In that prudential search request, the Government requested:

DOD OGC is requesting that HQDA search for and preserve any documents with material pertaining to: any type of investigation; working groups; resources provided to aid in rectifying an alleged compromise of government information damage assessments of the alleged compromise; or the consideration of any remedial measures in response to the alleged activities of PFC Manning and Wikileaks.

Clearly the Government is quite capable of asking for documents which “discussed the damage resulting from the unauthorized disclosures.” *See* Government Response, p. 23. Instead, it realized as it was preparing its Response that it had never actually asked for *Brady* information, to include documents which discussed the lack of damage resulting from the alleged leaks. So it needed to find some way to explain the glaring omission – and the only way possible was to read into the statement “documents related to WikiLeaks” to include documents related to damage (or lack thereof) caused by the alleged leaks. This is a stretch, even for the Government.

111. As noted above, it was not until May of 2011 that the Government began sending out these prudential search requests (which did not even ask for *Brady* material). The Government fails to explain why there is a *one-year gap* (or significantly more) between the accused being placed in pretrial restraint and its submission of these prudential search requests. Not only did it take the Government a year to send out prudential search requests, but it took over another year to actually produce responsive documents from these agencies. In short, it took *over two years* for the Defense to receive discovery, including *Brady* discovery, from closely aligned agencies. For instance, even though the Government sent ODNI a prudential search request on 27 May 2011 (a year after PFC Manning was placed in pretrial restraint), it waited until 11 July 2012 to review the responsive documentation. *See* Chronology. This is a total of 411 days for the Government to even sit down and review documents from a closely aligned agency. And then, it wasn’t until 14 September 2012 that the Government disclosed these ODNI documents to the Defense, which brings the elapsed time between the submission of the prudential search request and disclosure to the Defense to 476 days.

112. The Government claims to have “both formally in writing and informally through emails and in meeting, requested many updates on the status of the search.” *See* Government Response,

p. 23. The Government could have asked for updates every day for 400 days – that would not change the fact that the agencies themselves were not reasonably diligent in producing the information. The Government never appears to have *once* asked why the process was taking so long. Regardless of who bears the blame for the delay – which the Defense submits is both the agencies and the Government – the time is attributable to the Government for speedy trial purposes.

113. There are too many open-ended questions for the Defense to count when it comes to the Government's discovery obligations. Below, the Defense highlights three specific discovery issues (of many) that the Government has yet to account for.

a) Department of Homeland Security Damage Assessment

114. The Government indicates that on 19 October 2011, "DHS authorize[d] prosecution to review DHS damage assessment." *See* Chronology. It is not clear when the DHS completed the damage assessment, but it is safe to assume that it was months prior. The Government did not disclose the existence of the DHS damage assessment until 6 June 2012, sum 231 days after the Government was authorized by DHS to review the damage assessment.

115. The Government failed to provide any explanation as to why this damage assessment, much like the ONCIX damage assessment, was hidden from view until the 11th hour. However, when one looks at the Government's chronology, it is clear what happened. The Government was hoping to hide the very existence of the DHS damage assessment from the Defense and the Court. However, when the Court ruled against the Government on 11 May 2012, denying its motion for reconsideration of the Court's ruling on the discoverability of the Department of State damage assessment, the Government realized it was in trouble. Consequently, there was a flurry of discussion between the DHS and the Government in the immediate aftermath of the Court's order. *See* Chronology (16-May-12 Wed Email with DHS-discussed Court Order; 21-May-12 Mon Email with DHS-discussed Court Order; 24-May-12 Thu Email with DHS-notified that DHS is in the process of clearing the damage assessment for disclosure to the defense). It is clear that the Government would never have disclosed the existence of the DHS damage assessment absent the Court's ruling on 11 May 2012 (but note: there is no indication that the DHS damage assessment at this point was even in draft form).¹⁹

¹⁹ In the aftermath of the Court's 11 May 2012 ruling, the Government reached out to dozens of entities asking for discoverable material. *See* Government Chronology:

14-May-12 Email with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Email with FMC to inquire about any discoverable material
14-May-12 Mon Email with MMC to inquire about any discoverable material
14-May-12 Mon Email with OPI to inquire about any discoverable material
14-May-12 Mon Email with SSA to inquire about any discoverable material
14-May-12 Mon Email with SSS to inquire about any discoverable material
14-May-12 Mon Phone call with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Phone call with FCA to inquire about any discoverable material
14-May-12 Mon Phone call with FMC to inquire about any discoverable material
14-May-12 Mon Phone call with MMC to inquire about any discoverable material
14-May-12 Mon Phone call with OPI to inquire about any discoverable material
14-May-12 Mon Phone call with SBA to inquire about any discoverable material

b) IRTF Damage Assessment and Second Follow-On Damage Assessment

116. As yet another example of the Government's lack of diligence, on 25 October 2011, the Government "requested approval to disclose the classified IRTF Final Report to the defense." This obviously means that the IRTF damage assessment was prepared many months prior. *See* Chronology. And yet, it was not until 6 June 2012 that the Government disclosed the IRTF damage assessment to the Defense. Again, it was likely a full year (if not longer) between completion of the report and its disclosure to the Defense. A one-year turn-around time for a document – even a classified document – does not constitute moving the case along with reasonable diligence. The Government fails to provide any explanation for the lengthy delay.

117. Another issue the Government completely ignores in its Response is the CIA's second "follow-on report to the original WikiLeaks Task Force Report." *See* Prosecution Notice to the Court of Identification of Additional CIA Information. The Government indicated that it had "learned on 11 July 2012 that the CIA ha[d] drafted another report analyzing the impact of the WikiLeaks disclosures on a discrete matter." The Government's 11 July 2012 entry fails to mention this apparently important matter.

118. However, interestingly, the Government's Chronology notes that on 11 April 2012, the "Prosecution reviews two versions of OGA1 damage assessment." Was one of the two damage assessments this "follow-on report" that the Government claimed to have learned about on 11 July 2012? The Government states in its Notice that "the United States intends to review the additional reports on 13 July 2012." And yet, 13 July 2012 does not contain any reference to the follow-on CIA Report. In fact, the Defense could find no reference in the Government's chronology to the second CIA Report. As the Defense asked in its Motion to Dismiss for Lack of a Speedy Trial, why was the Government in 11 July 2012 just "learn[ing] on 11 July 2012 that the CIA has drafted another report." When was the report prepared? Why did the Government not know about the report? Or, did the Government know about the report for quite some time? Again, the Government remains mum on the answers to these questions.

119. The Government claims that these late disclosures did not impact the Defense and implies that the Defense should be grateful to the Government for providing discovery:

The defense also alleges that the delay in discovery has impacted his ability to prepare for trial. ... Further, to the contrary, *the prosecution's proactive discovery efforts better enabled the accused to prepare his defense.* The prosecution, *sua sponte*, submitted preservation requests to more than a dozen government organizations. ... The discovery already provided to the defense has resulted in additional defense discovery requests. These continued requests reveal

17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCPC
17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCTC

The timing should not be viewed as mere coincidence. Undoubtedly, the Government realized that all these organizations potentially had draft documents which could be discoverable.

that the defense valued the discovery they received and *were willing to wait based on the possibility of the existence of more discoverable information.*

See Government Response, p. 79 (emphasis supplied).

120. The Government is completely out of touch with reality if it believes that the late disclosure “better enabled the accused to prepare his defense” and that the Defense was “willing to wait” for discovery. The Defense “wait[ed]” for discovery simply because it had no other choice. And the Defense is *still waiting* for discovery in this case. As of a couple of weeks ago, discovery was still pouring in, as evidenced by the Government’s Chronology:

15-Sep-12 Sat Discovery production: Bates# 00514454-00514497 (44 pages) including DHS information [Unclassified]
15-Sep-12 Sat Discovery production: Bates# 00514498- 00514498 (1 pages), including DHS information [Classified]
15-Sep-12 Sat Discovery production: Bates# 00514501- 00514898 (398 pages), including DIA and ODNI information (SCI F) [Classified with Special Control Measures]
19-Sep-12 Wed Discovery production: Bates# 00514499- 00514500 (2 pages), including DOE information [Unclassified]
19-Sep-12 Wed Discovery production: Bates# 00514899- 00515842 (944 pages), including DIA and CIA information [Classified]
19-Sep-12 Wed Discovery production: Bates# 00515843- 00519167 (3325 pages), including Quantico emails [Unclassified]
20-Sep-12 Thu Discovery production: Bates# 00519168- 00519352 (185 pages), including FBI information [Classified]
20-Sep-12 Thu Discovery production: Bates# 00519353- 00523672 (1286 pages), including DOS information [Classified]²⁰

c) Grand Jury Testimony

121. The Government also fails to explain why the huge time lag in producing *Brady* from grand jury testimony. It indicates that on 29 September 2010, “DOJ informed prosecution that judge signed order disclosing grand jury matters to prosecution.” See Government Chronology. But it wasn’t until 12 April 2012 that the Government reviewed grand jury information. *Id.* Although it had “authority to disclose” grand jury information to the defense on 2 June 2011, the grand jury information was not produced until 21 May 2012. This is almost one year later, and a total of 600 days after a judge signed an order allowing the grand jury material to be given to the Government. Again, the Government provides no explanation as to why the grand jury material could not have been produced much sooner than it actually was.

²⁰ Ironically, the Government includes an entry on 14 September 2012 stating “14-Sep-12 Fri PROSECUTION DISCLOSES, OR SUBMITS TO THE COURT FOR IN CAMERA REVIEW, ALL OUTSTANDING DISCOVERY.” Clearly, as of 14 September 2012, the Government had not disclosed all outstanding discovery.

122. Had the Government exercised reasonable diligence, the “discovery phase” of the court martial would not have extended well over two years into the case. It is unacceptable that 847 days into the case, discovery is still not complete. Had the Government made inquiries much sooner than it did, and had it kept on top of the agencies in a diligent manner, the case would have gone to trial a great deal sooner than February 2012.²¹

7. The Government Was Not Reasonably Diligent in Providing Discovery From Quantico

123. As documented in previous motions, included the Defense’s Motion to Dismiss for Lack of a Speedy Trial, the Government dumped critical emails on the Defense literally the night before the Defense’s Article 13 motion was due, and after the Defense had already filed its Attachments with the Court. This is yet another in a long series of examples of bad faith on the part of the Government. When the Government’s lack of diligence is tied to bad faith, this weighs heavily in the speedy trial calculus. *See Barker v. Wingo*, 407 U.S. 514, 531 (1972) (“[D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defense. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.”).

124. The Government’s extremely late disclosure of the Quantico emails (and subsequent communications with the Defense) is illustrative of both lack of diligence and bad faith on the part of the Government. The Government justifies holding on to these emails for up to a year without even so much as looking at them (much less disclosing them) on the following basis:

On 8 December 2010, the Defense submitted a discovery request, requesting “[a]ny and all documents or observation notes by employees of the Quantico confinement facility relating to [the accused].” Enclosure 1 to AE CCXLIV. In the same discovery request, the Defense requested “[a]ny report, *e-mail* or document discussing the need for the State Department to disconnect access to its files from the government’s classified network.” *Id.* (emphasis added). The discovery request also requested, “[a]ny *e-mail*, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice.” *Id.* (emphasis added). The discovery request further requested, “any and all memorandums, *e-mails*, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish [the accused].” *Id.* (emphasis added). The discovery request requested, “[a]ny and all documentation, *e-mails*, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of

²¹ It is clear that the Government was nowhere close to prepared to go to trial in February 2011 when it referred the case. Instead, it referred the case in order to stop the Speedy Trial clock under R.C.M. 707 and then took its time over the next year to complete all the tasks that should have been completed in the first year and a half of this court martial.

[the accused's] case or nature of the charges or possible charges against [the accused]." *Id.* (emphasis added).

See Government Response, p. 41. In short, the Government's justification for sitting on these emails for six months to one year is "we didn't think you wanted them." It is inconceivable that the Government could make this argument with a straight face.

125. Apparently, the Government believes that the term "document" does not capture emails. This would mean that emails are not discoverable under R.C.M. 701(a)(2), since the section refers only to "documents" and not "emails." If "emails" are not a subset of "documents" then the defense would never be entitled to emails under R.C.M. 701(a)(2). Such a position is absurd. Any sensible interpretation of the term "documents" includes "emails." See e.g. *United States v. Solomon*, 2012 WL 3106790, *2 (N.M.Ct.Crim.App.) ("The defense submitted *two documents: an email* from the appellant's defense counsel from his previous court-martial and an incident report from the Camp Pendleton Provost Marshal's Office.") (emphasis supplied).

126. Moreover, even if the Defense did not specifically request "emails," the Government has an independent obligation to turn them over. The Discussion to R.C.M. 701 states that "[w]hen obviously discoverable materials are in the trial counsel's possession, trial counsel should provide them to the defense without a request." The discussion does not state that the Government's obligation kicks in when the Government "gets around" to looking at documents; such obligation kicks in once the documents are in the trial counsel's possession. Such documents were in the trial counsel's possession six months to one year prior to when they were disclosed. Waiting until a couple of days before the Defense filing date for the Article 13 motion to view these documents is not only grossly negligent, but unfortunately characteristic of the lack of diligence that has plagued this case from the outset.

127. When the Government disclosed the 84 emails the night before the Article 13 Motion was due, MAJ Fein indicated that these emails were "obviously material to the preparation of the defense." See Defense Motion to Dismiss for Lack of a Speedy Trial, Attachment 62. The Defense was troubled by the Government's use of the expression "obviously material to the preparation of the defense." Accordingly, the Defense sent an email to the Government asking whether there were documents that were material to the preparation of the defense, but not *obviously* material to the preparation of the defense. See Appellate Exhibit 243, Attachments; see also Appellate Exhibit 260. Two prosecutors from the Government (CPT Morrow and CPT Overgaard) responded that the Government had produced *all emails* that were material to the preparation of the defense, not simply those that are obviously material (i.e. the Government was not drawing a distinction between "material" and "obviously material"). *Id.*

128. On 17 August 2012, the Defense submitted a motion to compel production of the remaining 1,290 emails. See Appellate Exhibit 243. At this point, the Government decided to voluntarily disclose 600 more emails to the defense, as constituting documents that were "material to the preparation of the defense." What is clear is that two separate prosecutors were not entirely truthful with the Defense about having disclosed all documents that were material to the preparation of the Defense. The Government's Response completely overlooks this aspect of the Defense argument and never explains the misrepresentation by two different members of the prosecution team. As with so many other things in this case, the misrepresentations were

designed to hide from public view discovery that is embarrassing and damaging to the Government.

8. Miscellaneous Other Examples of the Government's Lack of Diligence and Mischaracterizations of Fact

129. Among the miscellaneous other examples of the Government's lack of diligence or mischaracterization of fact are the following:

- At p. 75 of its Response, the Government indicates that it exhibited diligence by submitting a prudential search request to CYBERCOM six days after the Defense submitted a request for CYBERCOM records. The Government was anything but diligent. It should already have submitted a prudential search request to CYBERCOM (much like it submitted a prudential search request to other military entities). As explained in previous motions, CYBERCOM files are military files, subject both to *Brady*/R.C.M. 702(a)(6) and R.C.M. 701(a)(2). Far from being diligent, the Government missed the boat on not having already searched these files earlier.
- The Government states that for the various administrative investigations related to the accused, the Government "immediately sought to review and produce said files to the defense." See Government Response, p. 6-7. The Government's definition of "immediately" is questionable. For instance, the Secretary of the Army AR 15-6 investigation was completed on 14 February 2011 and disclosed to the defense on 30 June 2011, 136 days later. Similarly, the United States Forces-Iraq (USF-I) AR 15-6 investigation was completed on 16 June 2010; the documents were not produced to the Defense until 12 May 2011, 262 days later. Finally, the United States Division-Center (USD-C) AR 380-5 investigation was completed on 16 June 2010, but not disclosed to the Defense until 9 February 2011, 238 days later. This hardly qualifies as "immediately."
- The Government indicates that it submitted a request for various OCAs to approve disclosure of the charged documents to the Defense on 14 March 2011, around the same time it requested classification reviews. Again, why did the Government wait 295 days before requesting that the OCAs approve disclosure of the documents to the Defense? Apparently, the process was not overly involved, as the OCAs all approved the document disclosure within 2 weeks.
- On 14 March 2011, the Government submitted written requests to various organizations to disclose classified evidence to the Defense. Based on the Government's description, this request relates to the computer forensics evidence in this case. The Government does not clearly indicate when the 14 March 2011 requests were approved. However, the Defense received the vast majority of the computer forensic evidence right before the Article 32, in November 2011. Accordingly, it appeared to take eight months for the Government to get all the requisite approvals to disclose the computer forensics information. The Government, again, provides no accounting for why the approval

process took so long. Incidentally, the Government had the full benefit of the forensic evidence for a year and a half prior to the Article 32, while the Defense had this evidence for approximately one month prior to the Article 32.²² Other than demonstrating that the Government was not acting in a diligent manner, the timing suggests (much like many things in this case) that the Government deliberately dumped tens of thousands of pages on the Defense immediately prior to the Article 32 in order to gain a tactical advantage.

C. The Government Misunderstands *Barker* and the Relevant Case Law

130. The Government claims that a nearly 1000 day delay in this case was not facially unreasonable. There is no military case in history that approaches anywhere near a 1000 day delay. To not concede that this is a facially unreasonable delay in light of R.C.M. 707's 120-day mandate is disingenuous. The Government cites *United States v. Schubert*, 70 M.J. 181 (C.A.A.F. 2011) for the proposition that the nearly 1000 day delay was not facially unreasonable within the context of this case. The Government, purportedly applying *Schubert*, proceeds to separately address "seriousness of the offense", "complexity of the case", "availability of proof" and "additional considerations" in order to bolster its contention that the nearly 1000 day delay is not facially unreasonable.²³ However, the Government conveniently ignores the *Schubert* court's warning that "an analysis of the first factor is not meant to be a *Barker* analysis within a *Barker* analysis." *Schubert*, 70 M.J. at 188. Rather, this first factor in the Article 10 procedural framework simply serves to screen off those cases in which the delay is not facially unreasonable. See *United States v. Thompson*, 68 M.J. 308, 312 (C.A.A.F. 2010); *United States v. Cossio*, 64 M.J. 254, 256 (C.A.A.F. 2007). As is readily apparent, the Government has improperly conducted a "*Barker* analysis within a *Barker* analysis" to arrive at a conclusion which defies common sense: that a nearly 1000 day delay is not facially unreasonable.

131. At bottom, the Government's analysis under *Barker* involves arguing, in as many different ways as possible, that this case is complex.²⁴ The term "complex" or "complexity" appears in the Government's Response a total of 85 times. Apparently, the Government believes that if you say something enough times, the Court will simply accept the Government's fallacious logic: "It's complex, therefore 1000 days is reasonable." As discussed above, nowhere in the Government's motion does it attempt to provide any showing that the 1000 days was, in fact, reasonable by any sort of objective, quantifiable or demonstrable measure. Instead, as always,

²² Indeed, its presentation at the Article 32 hearing focused almost exclusively on computer forensics.

²³ In this section, the Government also purports to explain what it was doing during time periods where the Defense claims there was no apparent Government activity. The Defense requests that the Court examine what the Government contends it was doing (which usually involved "coordinating" and other administrative tasks) and ask itself whether it is reasonable that it would take a five-person prosecution team that amount of time to complete the tasks the Government claimed it was completing.

²⁴ The Government appears to suggest at various points in its Response that it was the "rolling" nature of the disclosures that caused such a delay in the Government's processing of this case. The WikiLeaks disclosures and their timing is a red herring. The Government had computer forensics from PFC Manning's computer by late 2010 and was able to identify with precision what information was allegedly compromised. Moreover, all the closely aligned agencies had completed their damage assessments prior to all the documents being disclosed by WikiLeaks. For instance, the damage assessments by the 63 agencies for ONCIX were complete in February 2011, months prior to all the diplomatic cables being released. Thus, any argument that it was the subsequent disclosures by WikiLeaks that delayed the case is wholly without merit.

the Government expects the Court and the Defense to accept the Government's say-so that a 1000 delay is permissible because, well, "it's complex."

132. The Government then cites various cases involving "complexity" within the context of speedy trial claims. For instance, the Government cites *United States v. Morrison*, 22 M.J. 743 (N.M.C.M.R. 1986) for the proposition that "the government showed the complexities of the case and the unusually extensive efforts required to prepare for trial in a complicated scheme of larceny of records spanning 20 months, encompassing at least two dozen co-conspirators, and resulting in a loss of as much as one million gallons of aviation[sic.] fuel and significant United States Government action." What the Government fails to tell the Court, however, is that the Government in *Morrison* – in apparently an overwhelmingly complex case involving misconduct "spanning 20 months," "encompassing at least two dozen co-conspirators" and requiring "significant United States Government action" – managed to bring the accused to trial within 208 days. If the prosecution team in *Morrison* managed to bring the accused to trial in 208 days, why did it take the prosecution team in this case (with five prosecutors and a veritable army of paralegals, other attorneys and support staff) take nearly 1000 days to bring the accused to trial?

133. The Government also cites *United States v. Cole*, 3 M.J. 220, 227 (C.M.A. 1977) for the proposition that "The complex nature of a given case will serve as the sole justifiable basis for finding extraordinary delay, if the complexity was the proven cause of the delay." The Government states that the Court in *Cole* found "[b]ecause many of the witnesses had departed Fort Sill after AIT graduation, ... the difficulty of identifying and gathering material witnesses was "extraordinary." Again, what the Government fails to tell the Court is that in that case – one involving what the defense in that case called "overwhelming complexity" – the accused was brought to trial in 97 days, less than one-tenth of the time that it took the Government to bring the accused to trial in the instant case. *Id.* at 227.

134. Further, the Government relies on *United States v. Hatley*, 2011 WL 2782023 (A.C.C.A. 2011) for its "complexity justifies the inordinate delay" argument. See Government Response, p. 69. In *Hatley*, "[t]he government's asserted reasons for further delays were to complete the prosecutions in multiple cases arising from the murders, which involved as many as eighteen potential immunized witnesses and sixteen co-accuseds..." *Id.* at *5. The Court indicated that "[t]he complexity of a case, both in terms of the necessity for investigation and the number of witnesses involved, is a legitimate basis for delay." In that case, however, the elapsed time at issue was approximately 7 months (September 2008-April 2009). Again, if the Government in *Hatley* could bring an accused to trial in a complex case which "involved as many as eighteen potential immunized witnesses and sixteen co-accuseds" in approximately 200 days, surely the Government in this case could have brought the accused to trial prior to Day 1000.

135. The Court in *United States v. Duncan* did not allow the Government to invoke generalized assertions of "complexity" to get out of its speedy trial obligations. In *Duncan*, the Court was also dealing with a complicated case involving classified information. It found that the delay at issue (275 days) was not causally linked to the fact the case was complex or highly classified. It saw that many of the reasons for delay were "tactical concerns amounting to no more than a desire to forestall the [accused's] right of discovery and his right of cross-examination at the pretrial investigation and at his court-martial." So too was the case here. At every turn, the

Government made tactical and bad faith decisions to deny the accused his fundamental right to a fair trial, including his right to a speedy trial.

136. Every task in this case – from classification reviews, to request for approvals, to the 706 Board, to *Brady* discovery, to general discovery – was completed at a snail's pace. The Government treated this case as though it were on a Sunday drive, with no care in the world with respect to PFC Manning's speedy trial rights. Military courts do not countenance such a cavalier disregard for the statutory and constitutional rights afforded to an accused. In *United States v. Laminman*, 41 M.J. 518 (C.G. Ct. Crim. App. 1994), cited by the Government at p. 68, the Coast Guard Court of Criminal Appeals approved of the military judge's decision to dismiss the case on speedy trial grounds. In her findings, the trial judge concluded that a failure to send the Investigating Officer's report by courier, rather than by ordinary mail, "constituted a lack of reasonable diligence and evidence of a non-diligent, or negligent, attitude on the part of the Government during the case." The Coast Guard Court of Criminal Appeals stated:

At first glance, this conclusion might appear to place an undue emphasis on two days out of an overall delay of 109 days, for which the Government was accountable. It must be stated, however, that at the time the investigative report was completed the Accused had already been confined for 90 days, or as the judge put it, "about 64 days of confinement, even by the government's calculation". R. 4 (April 26, 1994). In the eyes of the trial judge, expedited action was called for at that point, and we agree that such a conclusion is entirely reasonable and supported by the evidence. ... When an accused has been confined for a lengthy period, as in this case, reasonable diligence may call for expeditious processing. ...

If the failure to transmit the report by a means more rapid than ordinary mail were the only indication of lack of reasonable diligence, we would have to find the dismissal of charges clearly erroneous. In our view, however, the judge saw that shortcoming as *merely reflecting an attitude by the Government inconsistent with reasonable diligence, which permeated the entire process*. In effect, that is what she said: I think that the nondiligent attitude of the government is really exemplified by the six-day transmittal of the 32 report.... Expeditious handling would be indicated at that point with due regard for the fact that the accused was confined at the time. Now that two days I am talking [about] in and of itself is not so significant, but it just shows you that the government had no regard for the fact that the man was confined. R. 6 (April 26, 1994).

Id. at 522 (emphasis supplied). This quote could not be more apt if spoken about the instant case. The Government had an "attitude ... inconsistent with reasonable diligence, which permeated the entire process" and "no regard for the fact that the man was confined." *Id.* What's worse is that, in PFC Manning's case, the lack of reasonable diligence does not appear to be sheer laziness on the part of the prosecution; rather, it is the result of a combination gross negligence and bad faith.

CONCLUSION

137. For the reasons discussed herein, and in the Defense's Motion to Dismiss for Lack of a Speedy Trial, the Defense requests that this Court dismiss all charges with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Coombs', is written over the printed name.

DAVID EDWARD COOMBS
Civilian Defense Counsel

Subject: RE: 305(g) Request

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Thu, Jan 13, 2011 1:18 pm

<coombs@armycourt martialdefense.com>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"
To: <JoDean.Morrow@jfhqncr.northcom.mil>, "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>

Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Paul Bouchard" <paul.r.bouchard@mnd-
b.army.mil>

David,

Thanks. If you can please send me Capt Moore's SSN so we can move on his clearance.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Thursday, January 13, 2011 11:51 AM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA; Morrow III, JoDean, CPT USA
JFHQ-NCR/MDW SJA; Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA
Cc: Matthew kemkes; Paul Bouchard
Subject: 305(g) Request

Ashden,

I have attached the renewed speedy trial request listing the Garrison commander instead of the GCMCA. I have also attached a request for release from confinement under R.C.M. 305(g) along with enclosures.

As mentioned before, the defense believes that there is no legitimate government objective for the current confinement conditions. Given the consistent recommendations of Capt. Hocter and PFC Manning's model behavior, there is no justification for PFC Manning to continue to be held in maximum custody and under POI watch. Please present this request to the Garrison commander.

The defense requests that the government respond in writing to the 305(g) request. Additionally, the defense requests that to government obtain the requested documentation in the 5 January 2011 memorandum to CWO4 Averhart, and any other supporting documentation from the Quantico Brig concerning PFC Manning's classification and assignment. The defense request that government

provide this documentation to the defense.

Please feel free to contact me if you have any questions or concerns.

Best,
David

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Subject: Re: 706 Board

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Sat, Dec 18, 2010 2:52 pm

To: <coombs@armycourtartialdefense.com>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>

Sir, Don't know all their names but will be getting them this week for clearances and read-ons. Once you get your SF86 completed, please send. Thx.

Ashden Fein

CPT, JA

202-685-4903 (O)

202-450-8230 (C)

From: coombs@armycourtartialdefense.com <coombs@armycourtartialdefense.com>

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA

Sent: Sat Dec 18 14:43:59 2010

Subject: 706 Board

Ashden,

Other than Dr. Sweda, who else is on the 706 board?

Best,

David

David E. Coombs, Esq.

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Subject: RE: MRE 505(h)(1)

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Tue, Feb 15, 2011 11:07 pm

To: <coombs@armycourt martialdefense.com>

"Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes"

Cc: <matthew.kemkes@us.army.mil>, <paul.bouchard@iraq.centcom.mil>, "Haberland, John CPT MIL USA" <John.haberland@us.army.mil>

Attach: 11-Feb-15-Excludable Delay Memorandum (ManningB).pdf

David,

We are still working with INSCOM to secure the facility and I hope to have an answer tomorrow. We will immediately start looking at your proposal for the 505(h)(1) issue and I will email to setup a phone call. Prior to that phone call, I offer one proposition which is that the security experts conducted the PCR and came back without ORCON information. Therefore we should operate from this point forward that none of the information is ORCON, unless there is evidence to the contrary.

Attached is the convening authority's action on excludable delay.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Tuesday, February 15, 2011 10:54 AM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes; paul.bouchard@iraq.centcom.mil; Haberland, John CPT MIL USA; Hall Cassius Mr FMCM (FTMYER); Charles.Ganiel@us.army.mil
Subject: [Suspected SPAM] RE: MRE 505(h)(1)
Importance: Low

Ashden,

Thank you for providing me with the Government's response. Based upon our earlier discussion, I believe the CA can determine the "need to know" for the board. The only exception, as you have identified, would be if any of the information is ORCON. In order to determine this and ensure that PFC Manning can discuss anything he wants with the Board on 1 March, I would like to meet with him in a SCIF on 24 Feb. I could be in D.C. by Noon and be at a SCIF

anytime after 1:00.

Assuming none of the information he provides to me is ORCON, then the only issue we may have is the 505(h)(1) requirement. Based upon the Government's response, there appears to be an easy work around on this issue. If the government will concede that it is waiving any right to assert 505(h)(5) penalties for the defense's failure to comply with the requirements of 505(h)(1) and (4), then I don't believe we will have an issue.

Please let me know if the government can arrange for the 24 Feb meeting in a SCIF and if you agree to waive the 505(h)(5) penalty for nondisclosure. Feel free to call me if you have any questions.

Best,
David

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----- Original Message -----

Subject: MRE 505(h)(1)
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Mon, February 14, 2011 4:11 pm
To: <coombs@armycourt martialdefense.com>
Cc: "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"
<JoDean.Morrow@jfhqncr.northcom.mil>; "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>; "Matthew kemkes" <matthew.kemkes@us.army.mil>;
<paul.bouchard@iraq.centcom.mil>;
"Haberland, John CPT MIL USA" <john.haberland@us.army.mil>

David,

I hope you had a relaxing weekend. Attached is the Prosecution's response to your MRE 505(h)(1) request in context of the RCM 706 board. Please review and let us know your updated position and way forward. Thank you.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)

COMM: 202-685-4903 (DSN 325)
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NIPR: ashden.fein@jhqncr.northcom.mil
SIPR: ashden.fein@jhqncr.northcom.smil.mil

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Subject: RE: MRE 505(h)(1)

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Fri, Feb 25, 2011 3:30 pm

To: <coombs@armycourt martialdefense.com>

"Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Carlile,

Cc: Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes"

<matthew.kemkes@us.army.mil>, <paul.bouchard@iraq.centcom.mil>, "Haberland, John CPT MIL USA" <john.haberland@us.army.mil>

David,

Although we do not consider this a waiver because we do not believe MRE 505(h) applies in this situation, we do acknowledge that by speaking with the RCM 706 board, the accused will not be in violation of MRE 505(h); thus, the penalties under MRE 505(h)(5) would not be triggered in this situation.

Based upon your request to not conduct your meetings with your client or the RCM 706 interview at the FIU SCIF, we have received formal authorization to use a U.S. Army INSCOM facility. As of today, we are scheduling a recon of the facility for early next week and will solidify the schedule and logistics for using this facility by the middle of next week. Please send me your schedule for the next three weeks (specifically when you will be available to be down in DC), so that we can determine the soonest date to schedule your meeting and then the RCM 706 board's interview.

We are continuing to work on your multiple discovery requests. In addition, we expect to have the additional charge sheet presented to the command in the near future for the commander to make a determination whether to prefer additional charges or not. I do plan on talking to you prior to the additional charge sheet being served on your client, if one is warranted.

Have a good weekend.

Ashden

Ashden Fein

CPT, JA

Chief, Military Justice

U.S. Army Military District of Washington (MDW)

COMM: 202-685-4903 (DSN 325)

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NIPR: ashden.fein@jfhqncr.northcom.mil

SIPR: ashden.fein@jfhqncr.northcom.s.mil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com

[mailto:coombs@armycourt martialdefense.com]

Sent: Tuesday, February 15, 2011 10:54 AM

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Carlile, Monica L. SFC USA

JFHQ-NCR/MDW SJA; Matthew kemkes; paul.bouchard@iraq.centcom.mil;

Haberland, John CPT MIL USA; Hall Cassius Mr FMCM (FTMYER);

Charles.Ganiel@us.army.mil

Subject: [Suspected SPAM] RE: MRE 505(h)(1)

Importance: Low

Subject: RE: RCM 706-Additional Charges (US v. PFC BM) (UNCLASSIFIED)

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Thu, Mar 03, 2011 10:12 pm

To: "Sweda, Michael G Dr CIV USA MEDCOM WRAMC" <MICHAEL.SWEDA@US.ARMY.MIL>

"Benesh, Samantha M MAJ MIL USA MEDCOM MAMC" <samantha.benesh@us.army.mil>,
<combs@armycourt martialdefense.com>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"

Cc: <JoDean.Morrow@jfhqncr.northcom.mil>, "Matthew kemkes" <matthew.kemkes@us.army.mil>,
<paul.bouchard@iraq.centcom.mil>, "Haberland, John CPT MIL USA" <john.haberland@us.army.mil>,
"Carlile, Monica SFC MIL USA OTJAG" <Monica.Carlile@us.army.mil>, "Hemphill, Marla R LTC MIL USA
MEDCOM BAMC" <marla.hemphill@us.army.mil>, "Moore, Kevin D. CAPT" <Kevin.D.Moore@med.navy.mil>

Dr. Sweda. We conducted the leader recon of the SCIF and found the proper conference and building just north of Ft. Belvoir, in Alexandria. Will you and the board be able to conduct the interview on a Saturday? Although we do have access to the building during the week, we would like to minimize PFC Manning's exposure to the public during his transportation and ultimately his travel throughout a USG contracted building during the process. We would also like to use this building on a Saturday, so that the board and PFC Manning are more relaxed going to an area that will be pedestrian-free.

Please let me know whether this is possible. Thank you.

w/
CPT Fein

Ashden Fein
CPT, JA
Chief, Military Justice
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CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: Sweda, Michael G Dr CIV USA MEDCOM WRAMC
[mailto:MICHAEL.SWEDA@US.ARMY.MIL]
Sent: Thursday, March 03, 2011 2:07 PM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Benesh, Samantha M MAJ MIL USA MEDCOM MAMC;
combs@armycourt martialdefense.com; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW
SJA; Matthew kemkes; paul.bouchard@iraq.centcom.mil; Haberland, John CPT MIL
USA; Carlile, Monica SFC MIL USA OTJAG; Hemphill, Marla R LTC MIL USA MEDCOM
BAMC; Moore, Kevin D. CAPT
Subject: RE: RCM 706-Additional Charges (US v. PFC BM) (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir and ALCON:

We have tentatively set a date of 11 March (Friday) for the next interview at the SCIF, beginning at 0830. Tell us if this will work.

v/r,

Michael Sweda, Ph.D., ABPP (Forensic)
Board-Certified Forensic Psychologist
Chief, Forensic Psychology Service
Director, Forensic Psychology Fellowship Walter Reed Army Medical Center
202-782-5899
202-782-7165 (fax)
202-538-5731 (business blackberry)
301-717-3416 (personal mobile)

"The United States themselves are essentially the greatest poem.
Past and present and future are not disjointed but joined."

-----Original Message-----

From: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
[mailto:Ashden.Fein@jfhqncr.northcom.mil]
Sent: Wednesday, March 02, 2011 11:15 PM
To: Sweda, Michael G Dr CIV USA MEDCOM WRAMC
Cc: Benesh, Samantha M MAJ MIL USA MEDCOM BAMC;
coombs@armycourt martialdefense.com; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW
SJA; Kemkes, Matthew J MAJ MIL USA; paul.bouchard@iraq.centcom.mil;
Haberland, John CPT MIL USA; Carille, Monica SFC MIL USA OTJAG; Hemphill,
Marta R LTC MIL USA MEDCOM BAMC
Subject: RCM 706-Additional Charges (US v. PFC BM)
Importance: High

Dr. Sweda,

Attached is a copy of additional charges in the case of U.S. v. PFC Manning.
On behalf of the convening authority, please include these charges in the
board's evaluation. As of today, both charge sheets are preferred and should
be considered.

Tomorrow morning, we are conducting a leader recon for the SCIF location for
the board to interview PFC Manning. After the recon, we will start
coordinating the defense counsel's meeting with the accused and then when we
can plan the board's interview. After we set the date for Mr. Coombs to meet,
we will ask the board for times to meet and then will coordinate.

Thank you.

v/r
CPT Fein

Ashden Fein
CPT, JA
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NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil
Classification: UNCLASSIFIED

Subject: RE: SCIF

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Thu, Mar 03, 2011 10:22 pm

To: <coombs@armycourtmarialdefense.com>

"Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, <paul.bouchard@iraq.centcom.mil>, <John.haberland@us.army.mil>

David. Below are answers or comments to your emails today.

1. We completed the leader recon of the SCIF location and secured an ideal location. It's ideal because it's in a building that will provide PFC Manning with very little exposure to third parties and is large enough to accommodate the defense team and the RCM 706 board. The location is just north of Ft. Belvoir, in Alexandria. We are planning on using Saturdays for the SCIF access to minimize the 3d party pedestrian traffic, because this facility is shared by the USG although belonging to the US Army INSCOM. The latrines are nearby and the access procedures will be easier for you and your team, compared to other locations.
2. We will schedule PFC Manning to be at MAJ Kemkes office the Friday before the SCIF meeting. We expect to have the Saturdays schedule tomorrow and will immediately contact you to figure out when you will be available to come down.
3. Please send us who, from the defense team, will be participating in the SCIF meeting with PFC Manning.
4. We are working on your expert request. The convening authority has been TDY and on leave, although we are in contact with him. We are working with the medical folks to determine the availability of an expert, so that we can present the request to the convening authority. We expect to have an answer by the middle of next week, which should be well before the RCM 706 board resumes its work- based on the SCIF arrangements.
5. We will work to determine the reason for PFC Manning being required to "strip naked at the end of the day".
6. We will work to determine what the situation is concerning the wireless headset telephone. Is this only when you and the defense team calls, for all his calls?

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
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NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourtmarialdefense.com
[mailto:coombs@armycourtmarialdefense.com]
Sent: Thursday, March 03, 2011 8:55 PM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW paul.bouchard@iraq.centcom.mil; john.haberland@us.army.mil
Subject: [Suspected SPAM] SCIF
Importance: Low

Ashden,

Any update on when I will be able to use a SCIF to speak with PFC Manning?
Also, once we identify the date, I would like to have PFC Manning pulled out the day before to meet with me at MAJ Kemkes' office.

Finally, I wanted to alert you to a couple of issues with the confinement facility. First, they are requiring Manning to strip naked at the end of the day and then to stand at attention naked during the 0500 DBS review. I can't imagine the reason for this to happen. Second, the facility has been using a wireless headset for his telephone conversations. Besides being insecure, the quality of the connection is compromised.

Best,
David

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----- Original Message -----

Subject: Charge Sheet
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Wed, March 02, 2011 3:57 pm
To: <coombs@armycourtmarialdefense.com>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>; "Matthew kemkes"
<matthew.kemkes@us.army.mil>; "Morrow III, JoDean, CPT USA
JFHQ-NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>;
<paul.bouchard@iraq.centcom.mil>; <john.haberland@us.army.mil>

David, Attached is the charge sheet.

Ashden

Ashden Fein

CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
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Subject: SCIF and Brig

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Sat, Mar 05, 2011 11:47 am

To: <coombs@armycourt martialdefense.com>

"Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"

Cc: <JoDean.Morrow@jfhqncr.northcom.mil>, <paul.bouchard@iraq.centcom.mil>, <john.haberland@us.army.mil>

David. Good morning. As per our previous conversation and emails, we received authorization to use the SCIF on Saturdays to minimize the accused's exposure to third parties. The SCIF is available any Saturday after today. Please look at the calendar and let us know when the soonest Saturday you can be here, so that we can schedule the conference room, security detail, the accused's meals, and the Friday before meeting at Myer. Once you send that information, then we will coordinate the RCM 706's meeting in the SCIF.

We spoke with the Brig about the removal of the accused's underwear at night. His underwear was taken from him because of a specific statement that he made to MSgt Papakle at the Brig. After he was served his new charges and MAJ Kemkes left the Brig, the accused asked why all of his items were taken at night with the exception of his underwear under POI status. According to the Brig officials, the accused then talked about the elastic band in his underwear and how that would be "probably the most dangerous piece" of clothing or words to that effect. MSgt Papakle believed that the accused was insinuating that he could harm himself with the elastic band on his underwear and discussed the issue with the accused. After this conversation, the Brig staff took this threat seriously and believes that the accused may have had recent thoughts or ideas as to the uses of the elastic band from his underwear to harm himself. The Brig staff removed his underwear to ensure that he does not harm himself. The next time you speak with your client, please ensure that he understands that any comment that could be reasonably construed as an intimation that he might harm himself, will be taken very seriously by the Brig staff, because their primary mission is to ensure the accused's well being and safety.

In addition, the accused was instructed to cover himself with his blanket during the morning "stand-to." Despite the Brig staff allowing him to cover-up during this morning process, he elects to stand naked in his cell rather than to cover himself with his blanket.

COL Malone was on emergency leave the day the accused was served with additional charges; however he came back yesterday and visited with the accused. Also, COL Malone is still working the accused's request to have a female mental health provider.

We are still working on the portable phone issue you brought up this past week. Despite the quality of the phone call, there is no monitoring of any communications between members of the defense team and the accused.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
CELL: ashden.fein@us.army.mil

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Subject: Re: [Suspected SPAM] RE: SCIF and Brig

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Sat, Mar 05, 2011 5:35 pm

To: <coombs@armycourt martialdefense.com>

"Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, <paul.bouchard@iraq.centcom.mil>, <john.haberland@us.army.mil>

David. We will need until monday morning to confirm with the command the security detail. We should know by 1200 on monday.

Ashden Fein

CPT, JA

202-685-4903 (O)

202-450-8230 (C)

From: coombs@armycourt martialdefense.com <coombs@armycourt martialdefense.com>

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil <paul.bouchard@iraq.centcom.mil>; john.haberland@us.army.mil <john.haberland@us.army.mil>

Sent: Sat Mar 05 17:19:11 2011

Subject: [Suspected SPAM] RE: SCIF and Brig

Ashden,

My facts about what was said and how it was said are somewhat different than what was provided to you. More importantly, COL Malone saw PFC Manning on Friday and assessed him as a low risk and requiring only routine outpatient follow-up. Specifically, he determined that there was no need for psychiatric admission for closer clinical observation. Despite this, the Brig maintains they are stripping him at night for his own protection. It appears that he is in a Catch-22. If he does everything he is told to do, the Brig starts to wonder what are they missing. If he does anything out of boredom or starts to question the absurdity of his treatment, then they determine this is a threat and overreact.

I would like to meet with Manning on the 11th and 12th. Can you arrange everything with this short of notice? If not, then the 25th and 26th of March is my next window. Let me know ASAP and I will make my travel arrangements.

Best,

David

David E. Coombs, Esq.

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45 North Main Street, 5th Floor

Fall River, MA 02720

Office: 1-800-588-4156

Fax: (508) 689-9282

coombs@armycourt martialdefense.com

www.armycourt martialdefense.com

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Wed, Mar 09, 2011 4:21 pm

To: <coombs@armycourt martialdefense.com>

"Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>, "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"

Cc: <JoDean.Morrow@jfhqncr.northcom.mil>, <paul.bouchard@iraq.centcom.mil>, "Haberland, John CPT MIL USA" <john.haberland@us.army.mil>

David, Thank you. I will send an email to the board to determine how long they will need. MTF.

Ashden

Ashden Fein

CPT, JA

Chief, Military Justice

U.S. Army Military District of Washington (MDW)

COMM: 202-685-4903 (DSN 325)

CELL: 202-450-8230

NIPR: ashden.fein@jfhqncr.northcom.mil

SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com

[mailto:coombs@armycourt martialdefense.com]

Sent: Wednesday, March 09, 2011 3:33 PM

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes; Morrow III,

JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil;

Haberland, John CPT MIL USA

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)

Importance: Low

Ashden,

There is also the option that I could meet with PFC Manning starting at 0800 on Saturday. The board could start its meeting with PFC Manning at 1400 on Saturday. I believe that this allocation of time would be sufficient given my discussions with my security experts.

Best,

David

David E. Coombs, Esq.

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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Wed, March 09, 2011 3:11 pm
To: <coombs@armycourt martialdefense.com>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>; "Matthew kemkes"
<matthew.kemkes@us.army.mil>; "Morrow III, JoDean, CPT USA
JFHQ-NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>;
<paul.bouchard@iraq.centcom.mil>; "Haberland, John CPT MIL USA"
<john.haberland@us.army.mil>

David, We are working on setting up the SCIF for Friday the 25th,
although
this will likely cause your client to be seen by 3d parties, which we
still
rather avoid by using a Saturday without additional delays. Thank
you.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Wednesday, March 09, 2011 2:12 PM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes;
Morrow III,
JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil;
Haberland, John CPT MIL USA
Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
Importance: Low

Ashden,

I have worked with the government on trying to get the earliest
possible

date. I was also the one who initially suggested (on 5 Mar) that we meet on a Saturday as opposed to a weekday in order to accommodate the government's concerns regarding other personnel at the SCIF. Prior to my suggestion, you were looking at trying to schedule multiple days in the evening at the SCIF. Any needed delay is not due to the defense.

As additional evidence of my desire to be accommodating, I would be happy to meet with PFC Manning in the SCIF on Friday the 25th. I would first like to see him at Fort Myer in the morning. We could then go to the SCIF starting at 1500. As long as we could stay at the SCIF until we are finished, I am willing to make that adjustment. This would allow the board to meet with PFC Manning on the 26th.

Best,
David

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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Wed, March 09, 2011 1:59 pm
To: <coombs@armycourtartialdefense.com>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>; "Matthew kemkes"
<matthew.kemkes@us.army.mil>; "Morrow III, JoDean, CPT USA
JFHQ-NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>;
<paul.bouchard@iraq.centcom.mil>; "Haberland, John CPT MIL USA"
<john.haberland@us.army.mil>

David. We determined last week that the SCIF outside of FIU would best be used on a Saturday and on Saturday (12 Mar) you requested the meeting to occur on Saturday (12 Mar). We spent Monday morning coordinating this meeting and was able to get back to you, but not before you scheduled your flights for two weeks from now. We are cognizant of your desire to minimize costs, but we are trying to minimize any delays. We were ready to go this weekend (12 Mar) and you asked us to push your meeting two weeks to the right.

The RCM 706 board is soonest available for a Saturday meeting, that weekend (26 Mar). We can request them to meet the following weekend (2 Apr), but this request needs to be submitted to the convening authority, based on his suspension to the RCM 706 board.

The RCM 706 board owes the convening authority a delay request based on the suspension and I want to clarify with them the reason for this delay.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@fhqncr.northcom.mil
SIPR: ashden.fein@fhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Wednesday, March 09, 2011 1:45 PM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes;
Morrow III,
JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil;
Haberland, John CPT MIL USA
Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
Importance: Low

Ashden,

I don't understand your message. We have discussed the issue of the 25th and 26th being the dates that I am meeting with PFC Manning. I sent the government several emails on this topic last month attempting to get a confirmed date for my visit in order to make the necessary travel arrangements.

I understand, that it apparently took some time to confirm access to

a SCIF.
However, despite my repeated request, I didn't hear anything from the government until it became cost prohibitive to purchase a ticket. It was my desire to meet with PFC Manning this week as opposed to the end of the month.
The delay in the process is not due to the defense.

The 706 board has indicated that the 26th is the earliest that they will be able to meet with PFC Manning. Please request the board to determine if they could see him the following week.

Best,
David

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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Wed, March 09, 2011 1:22 pm
To: <coombs@armycourt martialdefense.com>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>; "Matthew kemkes"
<matthew.kemkes@us.army.mil>; "Morrow III, JoDean, CPT USA
JFHQ-NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>;
<paul.bouchard@iraq.centcom.mil>; "Haberland, John CPT MIL USA"
<john.haberland@us.army.mil>

David,

Do you still want to meet with your client before the RCM 706 interviews him in the SCIF? If so and because you arranged for 25 and 26 Mar 11, please send a request through us to the convening authority to delay the RCM

706,
otherwise we will need to schedule the RCM 706 to meet on 26 Mar 11,
as the
soonest reasonable Saturday to meet with the accused. We want to
ensure the
RCM 706 board is diligently moving forward and not unnecessarily
delaying
this process, outside the scope of the convening authority's order.
Thank
you.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Tuesday, March 08, 2011 9:20 AM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes;
Morrow III,
JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil;
Haberland, John CPT MIL USA
Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
Importance: Low

Ashden,

Let's plan on the 25th and 26th. I have arranged for my travel and
coordinated with my experts. Once you determine the location, please
let me
know.

Best,
David

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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Mon, March 07, 2011 12:00 pm
To: <coombs@armycourt martialdefense.com>, "Haberland, John CPT MIL USA"
<john.haberland@us.army.mil>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA"
<Monica.Carlile@jfhqncr.northcom.mil>;, "Matthew kemkes"
<matthew.kemkes@us.army.mil>;, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>;, <paul.bouchard@iraq.centcom.mil>;

David. The arrangements were finalized this morning, immediately before your email. We needed to wait until this morning to finalize the coordination with the different entities. All the systems are in place for this Friday and Saturday, if you want to go then, but we understand minimizing cost is a factor for you.

Ashden

Ashden Fein
CPT, JA
Chief, Military Justice
U.S. Army Military District of Washington (MDW)
COMM: 202-685-4903 (DSN 325)
CELL: 202-450-8230
NIPR: ashden.fein@jfhqncr.northcom.mil
SIPR: ashden.fein@jfhqncr.northcom.smil.mil

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Monday, March 07, 2011 11:41 AM
To: Haberland, John CPT MIL USA
Cc: Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA; Matthew kemkes;
Morrow III,
JoDean, CPT USA JFHQ-NCR/MDW SJA; paul.bouchard@iraq.centcom.mil;
Fein,
Ashden CPT USA JFHQ-NCR/MDW SJA
Subject: [Suspected SPAM] RE: SCIF (UNCLASSIFIED)
Importance: Low

John,

When were the preparations finalized? Had I know yesterday, I could have arranged for this Friday. The price of fuel went up dramatically today. Given this development, the 25th and 26th are the earliest available dates. I have just completed the travel arrangements.

Best,
David

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----- Original Message -----

Subject: RE: SCIF (UNCLASSIFIED)
From: "Haberland, John CPT MIL USA" <john.haberland@us.army.mil>
Date: Mon, March 07, 2011 11:08 am
To: <coombs@armycourtmartrialdefense.com>, "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>
Cc: "Carlile, Monica L. SFC USA JFHQ-NCR/MDW SJA" <Monica.Carlile@jfhqncr.northcom.mil>; "Kemkes, Matthew J MAJ MIL USA" <matthew.kemkes@us.army.mil>; "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>; <paul.bouchard@iraq.centcom.mil>;

Classification: UNCLASSIFIED
Caveats: FOUO
Sir,

We will plan in accordance with your request. We are also prepared to move PFC Manning this Friday and Saturday but will wait until the 25th and 26th if that is what you prefer.

Very Respectfully,

CPT John B. Haberland
Regimental Judge Advocate
3rd U.S. Infantry Regiment (The Old Guard)
Office: (703) 696-3150
BB: (703) 244-5483
Building 242, Fort Myer, Virginia 22211
NIPR: john.haberland@conus.army.mil
SIPR: john.haberland@us.army.smil.mil (Please notify via NIPR)

From: coombs@armycourtmarialdefense.com
[mailto:coombs@armycourtmarialdefense.com]
Sent: Monday, March 07, 2011 11:06 AM
To: Fein,Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Carlile,Monica L. SFC USA JFHQ-NCR/MDW SJA; Kemkes, Matthew J MAJ
ML USA; Morrow III,JoDean,CPT USA JFHQ-NCR/MDW SJA;
paul.bouchard@iraq.centcom.mil; Haberland, John CPT ML USA
Subject: SCIF

Ashden,

Given the late notice, let's move the date to the 25th and 26th for
the Fort Myer and SCIF visit. I just checked flights for this week.
The
cost has gone up to over \$1,300.00. I can get a flight on the 25th
for
\$270.00.

Best,
David

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Classification: UNCLASSIFIED
Caveats: FOUO

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

V)

Manning, Bradley E.)
U.S. Army, [REDACTED])
Headquarters and Headquarters Company,)
U.S. Army Garrison, Joint Base Myer-)
Henderson Hall, Fort Myer, VA 22211)

**RULING: GOVERNMENT
IN CAMERA AND EX PARTE
MOTIONS FOR
AUTHORIZATION OF
REDACTIONS/SUBSTITUTIONS
FOR DOS AND FBI RECORDS**

DATED: 18 October 2012

On 14 September 2012, the Government moved *ex parte* under Military Rule of Evidence (MRE) 505(g)(2) and Rule for Courts-Martial (RCM) 701(g)(2) for the Court to conduct an *in camera* review of and authorize limited disclosure in the form of redactions for DOS and FBI records. The Defense opposed redaction.

The Court reviewed the Government's unclassified and classified motions for redactions to DOS and FBI records and conducted an *in camera* review of the original documents and the proposed redactions. In coming to this ruling, the Court has considered the factors requested by the Defense in paragraph 7 of its 19 September 2012 response. The Court finds and rules as follows:

DOS records: On 28 September, the Court granted the Government motion for MRE 505(g)(2) substitution by redaction for the "bucket 3" records. The Court granted the Government motion for MRE 505(g)(2) substitution by redaction for the "bucket 2" records in part, finding the vast majority of the proposed redactions of the DOS documents in "bucket 2" were personally identifiable information (PII) of individuals in the Persons at Risk Group and were properly redacted IAW the Court's 19 July 2012 Ruling: Defense Motion to Compel DOS Discovery – Motion to Compel #2. The Court identified one potential categorical exception and held an *ex parte, in camera* classified article 39(a) session with the Government on 2 October 2012 to address the potential categorical exception. A court reporter transcribed the classified proceedings. On 17 October 2012, the Government advised the Court that the redacted information the Court required for release to the Defense was no longer redacted and was available for disclosure to the Defense. The Government motion for MRE 505(g)(2) substitution by redaction is granted.

FBI records: After conducting the *in camera* review of the FBI records, the Court held an *ex parte, in camera* classified article 39(a) session with the Government on 12 October 2012 to address several concerns of the Court with respect to some of the records proposed for redaction. The Article 39(a) session was transcribed by a court reporter and the Court's concerns are on record. On 17 October 2012, in AE 349, the Government disclosed one portion of the FBI

file that the Court ordered disclosed to the Defense. The Court held a second *ex parte, in camera* classified article 39(a) session with the Government on 17 October 2012 to address the remaining concerns of the Court. That article 39(a) session was also transcribed by a court reporter. All of the remaining concerns raised by the Court have been addressed by the Government. The Government motion for MRE 505(g) substitution by redaction is granted. The information redacted is not relevant to the accused or to the charged offenses or constitutes attorney and other Government work product or administrative information.

The redacted DOS and FBI records meet the Government's discovery obligations under *Brady* and RCM 701(a)(6) to disclose evidence tending to reasonably negate the guilt of the accused to an offense charged, reduce the degree of guilt to an offense charged, or reduce the punishment. The redacted information in the DOS and FBI substitutions is not material to the preparation of the defense to the extent necessary for production for discovery under RCM 703(f). The classified information in the redaction is not necessary to enable the accused to prepare for trial.

No redacted information in the DOS or FBI records that has not been disclosed to the Defense will be used by the Government or by any Government witness during any portion of the trial to include rebuttal and rule of completeness.

The substitution for the DOS "bucket 2" records and the FBI records is sufficient for the Defense to adequately prepare for trial and represents an appropriate balance between the right of the Defense to discovery of relevant and necessary classified information and the protection of specific national security information, particularly intelligence sources and methods and, for the DOS records, the safety of individuals identified by DOS as persons at risk.

RULING: The motions by the Government to voluntarily provide limited disclosure under MRE 505(g)(2) for DOS and FBI records is **GRANTED**.

Ordered this 18th day of October 2012.



DENISE R. LIND
COL., JA
Chief Judge, 1st Judicial Circuit

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

**RULING: Defense Motion:
Motion for Judicial Notice of
Adjudicative Facts – Finkel Book
And Public Statements**

18 October 2012

Finkel Book:

1. On 3 August 2012, the Defense moved the Court to take judicial notice of David Finkel's book The Good Soldiers, that it was published before publication of the video at issue in specification 2 of Charge II, and the book contains audio from the video. The Government did not oppose the Court taking judicial notice that the book was published before publication of the video but did object to the Court taking judicial notice that the book contains a verbatim transcript of the video. The Defense provided the Court with a Washington Post article dated 6 April 2010 by David Finkel describing an excerpt from his book but did not provide the excerpt from Mr. Finkel's book.

2. On 30 August 2012, the Court ruled in AE 288 that the Court would take judicial notice of Mr. Finkel's book and relevant excerpts from pages of the book if the Defense provided the Court with the necessary information. The Court denied the Defense motion to take judicial notice that Mr. Finkel's book contains a verbatim description of the audio from the video charged in Specification 2 of Charge II as linkages, argument, and legal conclusions regarding the contents of Mr. Finkel's book and the audio in the video are properly presented to the fact finder by the parties not by the Court.

3. The Defense has provided the Court with the video and relevant excerpts from Mr. Finkel's book. The Court compared the excerpts with the video. Defense now moves the Court to take judicial notice of Mr. Finkel's book, the date of publication, the provided excerpts, and that the book quotes the video verbatim at several key points.

4. The Court adheres to its 30 August 2012 ruling. The Court will take judicial notice of Mr. Finkel's book, the date of publication, and the provided excerpts. Comparisons between Mr. Finkel's book and conclusions to be drawn from the comparisons are properly presented to the fact finder by the parties not by the Court. The request to take judicial notice that the book quotes the video verbatim at several key points is denied.

Statements by Public Officials

1. On 3 August 2012, Defense moved the Court to take judicial notice of statements made by public officials and proffered the adjudicative facts judicially noticed would be relevant for sentencing. The Government opposed.

2. In their original motion, Defense proffered that the statement of public officials that Defense seeks to have judicially noticed as adjudicative facts are admissible as admissions by a party opponent under MRE 801(d)(2)(B) and (D). The Government opposed admission and judicial notice.

3. On 30 August 2012, the Defense supplied the Court with additional case-law in support of their argument and additional bases for admission of the evidence to be judicially noticed. The Court ordered supplemental briefs to be filed by the parties regarding the following issues:

- a. Admissibility under MRE 801(d)(2)(B) and (D) addressing the new case-law provided by the defense; Whether a statement by a Congressman is admissible.
- b. The applicability of MRE 805 (Hearsay Within Hearsay);
- c. Whether the requested evidence is admissible as residual hearsay under MRE 807;
- d. Whether each proposed statement offered for admission is offered for the truth of the matter asserted;
- e. Admissibility of newspaper articles as business records;
- f. Whether there is any case-law regarding taking judicial notice of newspaper articles;
- g. The parties position regarding admissibility of the proposed public statements for sentencing when the rules have not been relaxed and when the rules have been relaxed IAW RCM 1001(c)(3).

Also on 30 August 2012, the Defense presented the Court with a 28 July 2010 letter from Senator Carl Levin to Secretary of Defense Robert Gates, a 16 August 2010 response by Secretary Gates, and the portion of the Congressional Record of the 16 December 2010 hearing before the Committee on the Judiciary, House of Representatives on Espionage Act and the Legal and Constitutional Issues Raised by Wikileaks that contained the opening statement by congressman John Conyers, Jr..

4. On 13 September 2012, the Defense filed a supplemental brief. In it, the Defense provided a 24 April 2011 statement by Pentagon Press Secretary Geoff Morrell and Special Envoy for Closure of the Guantanamo Detention Facility, Ambassador Daniel Fried, issued as a news release on the web by the Department of Defense (DoD). The Defense requested the Court take judicial notice of this statement in lieu of the 24 April 2011 New York Times Article. Similarly, the Defense presented the Court with a 27 July 2010 statement of President Barrack Obama issued by the White House Office of Press Secretary. Defense moves the Court to take judicial notice of this statement in lieu of the 27 July 2010 BBC News article. The Defense further moves the Court take judicial notice of Senator Levin's 28 July 2010 letter and Mr. Gates' response in lieu of the 15 October 2010 Associated Press and MSNBC articles and to take notice of the 30 November 2010 Defense.gov news transcript of a DoD News Briefing with Secretary Gates in lieu of the 30 November 2010 New York Times Article. Finally, the Defense moves the Court to take judicial notice of Secretary of State Hillary Clinton's 1 December 2010 "Remarks With Kazakh Foreign Minister Saudabayev After Their Meeting" released on the Department of State website in addition to Secretary Clinton's comments reported in the 1 December 2010 USA Today article "Clinton: WikiLeaks won't hurt U.S. diplomacy", the 4 December 2010 CNN article "Clinton, WikiLeaks cables show diplomacy at work", 4 December 2010 New York

Times article "From WikiLemons, Clinton Tries to Make Lemonade", and 4 December 2010 UPI article "Clinton on leaked documents: So what?". The Government opposes but stipulates that the statements at issue were made and stipulates to the admissibility of that portion of the statements made by Pentagon Press Secretary Morrell and Special Envoy for Closure of the Guantanamo Detention Facility Ambassador Daniel Fried, President Obama, and Defense Secretary Gates in his 16 August 2010 letter. The Government further concedes that if the rules sentencing are relaxed under RCM 1001(c)(3) that all of the statements except those of Secretary of State Hillary Rodham Clinton would be admissible.

A. Geoff Morrell, Pentagon Press Secretary – "It is unfortunate that the New York Times and other news organizations have made the decision to publish numerous documents obtained illegally by Wikileaks concerning the Guantanamo detention facility. These documents contain classified information about current and former GTMO detainees, and we strongly condemn the leaking of this sensitive information. The Wikileaks releases include Detainee Assessment Briefs (DABs) written by the Department of Defense between 2002 and early 2009. These DABs were written based on a range of information available then. The Guantanamo Review Task Force, established in January 2009, considered the DABs during its review of detainee information. In some cases, the Task Force came to the same conclusions as the DABs. In other instances, the Review Task Force came to different conclusions, based on updated or other available information. The assessments of the Guantanamo Review Task Force have not been compromised to Wikileaks. Thus, any given DAB illegally obtained and released by Wikileaks may or may not represent the current view of a given detainee. Both the previous and the current administrations have made every effort to act with the utmost care and diligence in transferring detainees from Guantanamo. The previous administration transferred 537 detainees; to date, the current administration has transferred 67. Both administrations have made the protection of American citizens the top priority and we are concerned that the disclosure of these documents could be damaging to these efforts. That said, we will continue to work with allies and partners around the world to mitigate threats to the U.S. and other countries and to work toward the ultimate closure of the Guantanamo detention facility, consistent with good security practices and our values as a nation."

B. President Barack Obama – "While I'm concerned about the disclosure of sensitive information from the battlefield that could potentially jeopardize individuals or operations, the fact is, these documents don't reveal any issues that haven't already informed our public debate on Afghanistan. Indeed, they point to the same challenges that led me to conduct an extensive review of our policy last fall."

C. Defense Secretary Robert Gates – 16 August 2010 letter – "Thank you for your July 28, 2010 letter regarding the unauthorized disclosure and publication of classified military documents by WikiLeaks organization. I share your concerns about the potential compromise of classified information and its effect on the safety of our troops, allies, and Afghan partners. After consulting with the Director of the Federal Bureau of Investigation, I have directed a thorough investigation to determine the scope of any unauthorized release of classified information and identify the person or persons

responsible. I have also established an interagency Information Review Task Force, led by the Defense Intelligence Agency, to assess the content of any compromised information and the impacts of such compromise. Our initial review indicates most of the information contained in these documents relates to tactical military operations. The initial assessment in no way discounts the risk to national security; however, the review to date has not revealed any sensitive intelligence sources and methods compromised by this disclosure. The documents do not contain the names of cooperative Afghan nationals and the Department takes very seriously the Taliban threats recently discussed in the press. We assess this risk as likely to cause significant harm or damage to the national security interests of the United States and are examining mitigation options. We are working closely with our allies to determine what risks our mission partners may face as a result of the disclosure. There is a possibility that additional military documents may be published by Wikileaks and the Department is developing courses of action to address this possibility. The scope of the assessment and the nature of the investigative process require a great deal of time and effort. I am committed to investigating this matter and determining appropriate action to reduce the risk of any such compromises in the future".

D. Defense Secretary Robert Gates - DoD News Transcript – 30 November 2010 – "Let me just offer some perspective as somebody who's been at this a long time. Every other government in the world knows the United States government leaks like a sieve, and it has for a long time. And I dragged this up the other day when I was looking at some of these prospective releases. And this is a quote from John Adams: How can a government go on, publishing all of their negotiations with foreign nations, I know not. To me, it appears as dangerous and pernicious as it is novel. Now, I've heard the impact of these releases on our foreign policy described as a meltdown, as a game-changer, and so on. I think those descriptions are fairly significantly overwrought. The fact is, governments deal with the United States because they believe we can keep secrets. Many governments, some governments, deal with us because they fear us, some because they respect us, most because they need us. We are still essentially, as has been said before, the indispensable nation. So other nations will continue to deal with us. They will continue to work with us. We will continue to share sensitive information with one another. Is this embarrassing? Yes. Is it awkward? Yes. Consequences for U.S. foreign policy are I think fairly modest."

E. Secretary of State Hillary Rodham Clinton, DOS Press Release, 1 December 2010, "Remarks With Kazakh Foreign Minister Saudabayev After Their Meeting" – "I have certainly raised the issue of leaks in order to assure our colleagues that it will not in any way interfere with American diplomacy or our commitment to continuing important work that is ongoing. I have not had any concerns expressed about whether any nation will not continue to work with and discuss matters of importance to both of us going forward. As I said, I am proud of the work that American diplomats do, and the role that America plays in the world. Both President Obama and I are committed to a robust and comprehensive agenda of engagement. And I am confident that the work that our diplomats do every single day will go forward. I anticipate that there will be a lot of questions that people have every right and reason to ask, and we stand ready to discuss them at any time with our counterparts around the world."

F. Secretary of State Hillary Rodham Clinton, CNN Politics, 4 December 2010, – “Clinton: WikiLeaks cables show diplomacy at work”, 4 December 2010 New York Times article “From WikiLemons, Clinton Tries to Make Lemonade”, and 4 December 2010 UPI article “Clinton on leaked documents: So what?”– The confidential U.S. embassy cables posted online by the website WikiLeaks simply show “diplomats doing the work of diplomacy. Everybody is concerned. Everybody has a right to have us talk to them, and have any questions that they have answered, but at the end of the day – as a couple of analysts and writers are now writing –what you see are diplomats doing the work of diplomacy. But I haven’t seen everybody in the world, and apparently there’s 252,000 of these things out there in cyberspace somewhere so I think I’ll have some outreach to continue doing over the next weeks just to make sure as things become public, if they raise concerns, I will be prepared to reach out and talk to my counterparts or heads of state government. In a way, it should be reassuring, despite the occasional tidbit that is pulled out and unfortunately blown up. The work of diplomacy is on display, and you know, it was not our intention for it to be released this way – usually it takes years before such matters are. But I think there’s a lot to be said about what it shows about the foreign policy of the United States.”

G. Vice President Joseph Biden, MSNBC, undated, transcript of interview with Andrea Mitchell – “I came in, almost all of it was embraces, I mean it wasn’t just shaking hands. I know—I know these guys, I know these women. They still trust the United States. There’s all kind of things and [In response to a question “So there’s no damage?”] “I don’t think there’s any damage. I don’t think there’s any substantive damage, no. Look, some of the cables that are coming out here and around the world are embarrassing. I mean, you know, to say that, you now, for you to do a cable as an ambassador and say I don’t like Biden’s tie, he doesn’t look good and he’s a homely guy, that’s not something.”[I never said that] “No, I know you didn’t. But yet, I mean, you know – so there’s a lot of things like that would allow another nation to say they lied to me, we don’t trust them, they really are not dealing fairly with us.”

H. The Honorable John Conyers, Jr. Hearing on Espionage act and the Legal and Constitutional Issues Raised by WikiLeaks, 16 December 2010 – “We are too quick to accept government claims of risk to national security and far too quick to forget the enormous value of some national security leaks and, quoting Secretary Gates, “I have heard the impact of these releases on our foreign policy described as a meltdown, as a game changer, and so on. I think those descriptions are fairly significantly overwrought.”

3. On 29 August 2012, during oral argument, the Defense withdrew its request for judicial notice of public comments from Marine Colonel David Lapan.

4. On 30 August 2012, during oral argument, the Defense provided the Court with a copy of the 16 August 2010 letter from Secretary of Defense Robert M. Gates to Senator Carl Levin, Chairman, Senate Committee on the Armed Services. The letter provided the source for Mr. Gates’ statements quoted in the 15 October 2010 Associated Press article. In place of that

Article, the Defense requests the Court to take judicial notice of Mr. Gates' 16 August 2010 letter and the 28 July 2010 letter from Senator Levin requesting Mr. Gates' response.

The Law: Judicial Notice

1. Military Rule of Evidence (MRE) 201 governs judicial notice of adjudicative facts. The judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known universally, locally, or in the area pertinent to the event or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *U.S. v. Needham*, 23 M.J. 383 (C.M.A. 1987); *U.S. v. Brown*, 33 M.J. 706 (A.C.M.R. 1991).
2. MRE 201(c) requires the military judge to take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information.
3. When the military judge takes judicial notice of adjudicative facts, the fact finder is instructed that they may, but are not required to, accept as conclusive any matter judicially noticed.
4. Judicial notice is of adjudicative facts. Judicial notice is not appropriate for inferences a party hopes the fact finder will draw from the fact(s) judicially noticed. Legal arguments and conclusions are not adjudicative facts subject to judicial notice. *U.S. v. Anderson*, 22 M.J. 885 (A.F.C.M.R. 1985) (appropriate to take judicial notice of the existence of a treatment program at a confinement facility but not appropriate to take judicial notice of the quality of the program.).

The Law: Hearsay

1. Hearsay is a statement, other than the one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted. MRE 801(c). Hearsay is not admissible except as provided by the Military Rules of Evidence or by any Act of Congress applicable in trials by court-martial. MRE 802.
2. Admission by a Party Opponent. MRE 801(d)(2) provides in relevant part that admissions by a Party Opponent are not hearsay if the statement is offered against a party and is (A) the parties' own statement in either the party's individual or representative capacity; (B) a statement of which the party has manifested the party's adoption or belief in the truth; (C) a statement by a person authorized by the party to make a statement concerning the subject; or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment of the agent or servant made during the existence of the relationship....The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under (C), or the agency or employment relationship and the scope thereof under (D).
3. Relevant Hearsay Exceptions:
 - A. MRE 803(6) Records of Regularly Conducted Activity.
 - B. MRE 803(8) Public Records and Reports

C. MRE 807 Residual Hearsay

4. MRE 805 provides that hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

The Law: Sentencing – Relaxed Rules.

1. RCM 1001(C)(3) authorizes the military judge, with respect to matters in extenuation or mitigation or both, to relax the rules of evidence. This may include admitting letters, affidavits, certificates of military and civil officers and other writings of similar authenticity and reliability.
2. RCM 1001(C)(4) provides that when the rules of evidence have been relaxed for the Defense, they may be relaxed during rebuttal and surrebuttal to the same degree.

Conclusions of Law: The statements proffered by the Defense in enclosures A-H of the 13 September 2012 Defense Supplement are not relevant to the merits portion of the trial. The conclusions of law below address admissibility during the sentencing portion of the trial.

Admissibility as Admissions by a Party Opponent Under MRE 801(d)(2)(B) or MRE 801(d)(2)(D)

1. There is no direct military case law regarding whether statements by government agents can be admissible against a party opponent in a criminal proceeding. The Federal Circuits have varied opinions on this issue, *see U.S. v. Bellamy*, 403 Md. 308, 322-325 (Ct. App. Md 2008). This Court agrees it is possible for statements by executive branch officials to be admitted in a criminal proceeding as admissions of a party opponent. *See United States v. Van Griffin*, 874 F.2d 634, 638 (9th Cir. 1989) (holding that a manual on field sobriety testing issued by the government should be admissible as an admission of a party opponent in a drunk driving case); *United States v. Barile*, 286 F.3d 749, 758 (4th Cir. 2002) (holding that in prosecution for making false statements to the FDA, the statements of an employee of the FDA could be admitted against the government pending proper founding); *United States v. Warren*, 42 F.3d 647, 655 (D.C. Cir. 1994) (holding that government had manifested its belief in sworn statements by a police officer contained in an affidavit, therefore the statements were admissible under Federal Rule of Evidence (FRE) 801(d)(2)(B)). The Court further agrees with the Government that the cases allowing such admissions are those where the prosecution has manifested its belief in the truth of a statement in a court proceeding or judicial document that should be admissible when the Government takes a contrary position. *United States v. Branham*, 97 F.3d 835, 851 (6th Cir. 1991); *United States v. Morgan*, 581 F.3d 933, 937 (D.C. Cir. 1978).
2. The Court adopts the three-part test adopted by the Second Circuit in *United States v. Salerno*, 937 F.2d 797, 811 (2nd Cir. 1991) to determine if the statements at issue are admissible against the Government and worthy of judicial notice. The three-part test requires the Court, “[to] be satisfied that the prior [statement] involves an assertion of fact inconsistent with similar assertions in a subsequent trial. Second, the court must determine that the [statements] were

such as to be the equivalent of testimonial statements.... Last, the district court must determine by a preponderance of the evidence that the inference that the proponent of the statements wishes to draw is a fair one and that an innocent explanation for the inconsistency does not exist.” *Salerno*, 937 F.2d at 811 (2d Cir. 1991) (quoting *United States v. McKeon*, 738 F.2d 26, 33 (2d Cir. 1984) (quotations omitted); see also *United States v. DeLoach*, 34 F.3d 1001, 1005 (11th Cir. 1994) (adopting the test from *Salerno*).

3. To qualify for admission as a statement against a party opponent, the statement must bear such a close resemblance to in-court testimony that they may be considered its functional equivalent. As the Court noted in *McKeon* while analyzing whether use of prior opening statements were admissible against the government in subsequent criminal trials, “Speculations of counsel, advocacy as to the credibility of witnesses, arguments as to weaknesses in the prosecution’s case or invitations to a jury to draw certain inferences should not be admitted. The inconsistency, moreover, should be clear and of a quality which obviates any need for the trier of fact to explore other events at the prior trial. The court must further determine that the statements of counsel were such as to be the equivalent of testimonial statements by the defendant . . . Some participatory role of the client must be evident, either directly or inferentially as when the argument is a direct assertion of fact which in all probability had to have been confirmed by the defendant.” *McKeon*, at 33.

4. Casual statements made to private individuals, with no expectation of conveyance beyond the listener are not testimonial, even if highly incriminating to another. *United States v. Scheurer*, 62 M.J. 100, 105 (CAAF 2005)(quoting Robert P. Mosteller, *Crawford v. Washington: Encouraging and Ensuring the Confrontation of Witnesses*, 39 U. Rich. L.Rev. 511, 540 (2005). Testimonial statements bear the indicia of reliability often “contained in formalized . . . materials, such as affidavits, depositions, prior testimony, or confessions.” *United States v. Hendricks*, 395 F.3d 173, 181 (3d Cir. 2005) (quoting *Crawford v. Washington*, 541 U.S. 36, 52 (2004)). Statements “cannot be deemed testimonial” if the declarant “did not make the statements thinking that they would be available for use at a later trial.” *U.S. v. Scheurer*, at 105 (quoting *Crawford*, 541 U.S. at 52).

5. To determine whether a statement is testimonial and non-testimonial statements, it is relevant to inquire: Was the statement at issue in response to a law enforcement or prosecutorial or formal inquiry? Is the statement a direct assertion of fact? What was the primary purpose for making the statement? See *United States v. Rankin*, 64 M.J. 348, 352 (C.A.A.F. 2007), *McKeon*, at 33.

6. The fact that a statement is admissible against a party opponent does not bind the party to that statement. The party against whom such a statement is made can rebut the statement and assert a different or contrary position. *Bellamy*, 403 Md. at 328, fn 19.

7. There are eight statements of public officials currently at issue.

A. The statement by Geoff Morell, Pentagon Press Secretary, is admissible under MRE 801(d)(2)(D). The substance of the statement, specifically that the assessments of the Guantanamo Review Task Force have not been compromised to Wikileaks, is an assertion of fact, and likely one inconsistent with the position taken by the government at

trial. This statement delivered by a Pentagon Press Secretary and distributed to the media for widespread publication was done so under formal circumstances and is bereft of personal opinion. The primary purpose of the statement was to convey information to the public, unlike a statement made to family or friends, and this direct assertion of fact in all probability had to be confirmed by the government. The statement therefore is imbued with the reliability that is the hallmark of a "testimonial statement." Finally, a preponderance of the evidence demonstrates the inference to be drawn by the Defense is a fair one.

B. The statement by President Barack Obama to ABC News on 27 July 2010 is admissible under MRE 801(d)(2)(D). The substance of the statement, specifically that the [released information] doesn't "reveal any issues that haven't already informed our public debate on Afghanistan" is an assertion of fact, and likely one inconsistent with the position taken by the Government at trial. This statement by the President was delivered under formal circumstances, and presented to the media in the Rose Garden to be distributed to the public. The primary purpose of the statement was to convey information to the public, and this direct assertion of fact in all probability had to be confirmed by the government. The statement therefore is imbued with the reliability that is the hallmark of a "testimonial statement." Finally, a preponderance of the evidence demonstrates the inference to be drawn by the defense is a fair one.

C. The 16 August 2010 letter from Secretary of Defense Robert M. Gates to Senator Carl Levin, Chairman, Senate Committee on Armed Services, is admissible under MRE 801(d)(2)(D). The substance of the statement, specifically that the released information does not reveal sources and methods, is an assertion of fact, and likely one inconsistent with the position taken by the government at trial. The statement by Secretary Gates was delivered under formal circumstances, in response to a letter from Senator Carl Levin, and published on official letterhead. The primary purpose of the letter was to convey information to the Chairman of the Senate Committee on Armed Services and the public, and the direct assertions of fact contained therein in all probability had to be confirmed by the government. The statement therefore is imbued with the reliability that is the hallmark of a "testimonial statement." Finally, a preponderance of the evidence demonstrates the inference to be drawn by the defense is a fair one.

D. The statement by Secretary of Defense Robert M. Gates, on 30 November 2010, during a joint DOD news briefing with the Chairman, Joint Chiefs of Staff, Admiral Mike Mullen, is not admissible under MRE 801(d)(2)(D) and the Court declines to judicially notice the statement. The statement is not assertion of fact, it is one of personal belief ("I think those descriptions are fairly significantly overwrought.") Despite the formal circumstances under which the statement was made (e.g. a DOD news briefing with the Chairman of the Joint Chiefs of Staff) the Court finds the primary purpose of the statement was not an assertion of an unambiguous, factual matter, but a political one. Secretary Gates was addressing the press corps and explaining the repeal of the "don't ask, don't tell" law when a question arose regarding information sharing among the intelligence community. Secretary Gates was attempting to minimize the release of the

information on U.S. foreign policy. Persuasive speech of this kind is not a direct assertion of fact that in all probability had to be confirmed by the government, or is easily rebutted by similar assertions.

E. The statement by Secretary of State Hillary Rodham Clinton published on the DOS website on 1 December 2010, is not admissible under MRE 801(d)(2)(D) and the Court declines to judicially notice the statement. To begin, the statement is not an assertion of fact, it is one of personal belief ("I think there's a lot to be said about what it shows about the foreign policy of the United States."). Despite the formal circumstances under which the statement was made (e.g. declaration by a Secretary at a world security summit) the Court finds the primary purpose of the statement was not an assertion of an unambiguous, factual matter, but a political one. Secretary Clinton was attempting to bolster support among world leaders and top diplomats, despite the alleged security violations. Persuasive speech of this kind is not a direct assertion of fact that in all probability had to be confirmed by the government, or is easily rebutted by similar assertions.

F. The statements made by Secretary of State Hillary Rodham Clinton published by USA Today on 1 December 2010 and CNN.com, New York Times.com, and UPI.com on 4 December 2010, are not admissible under MRE 801(d)(2)(D) and the Court declines to judicially notice the statements. To begin, the statements are not an assertion of fact, it is one of personal belief ("I think I'll have some outreach to continue doing over the next weeks...") The Court finds that the statements in this interview are not the functional equivalent of "testimonial statements." The statements were ostensibly made off-camera, but on the record. Nevertheless, the Court finds the primary purpose was not an assertion of unambiguous, factual matters, but a political one. Secretary Clinton was again attempting to re-establish trust with world leaders through diplomacy. Persuasive speech of this kind is not a direct assertion of fact that in all probability had to be confirmed by the government, or is easily rebutted by similar assertions.

G. The undated statement made by Vice President Biden, during a one-on-one interview with NBC correspondent Andrea Mitchell, is not admissible under MRE 801(d)(2)(D) and the Court declines to judicially notice the statement. To begin, the statement is not an assertion of fact, it is one of personal belief ("I don't think there's any damage.") The Court finds that the statements in this interview are not the functional equivalent of "testimonial statements." The statements of the Vice President are not formally prepared remarks, rather they are off-the-cuff responses to questions and include such phrases as "Sure, I did," "Sure they are," "Well, look..." "I love the Senate. I love the Congress. I keep in touch with them." The nature of the statements themselves, including the qualifying language ("I don't think there's any damage") do not support the principle that the statements are testimonial in nature. Moreover, the topics discussed during the interview cover a broad range of subjects from the Vice President's relationship with the President, to the death of Richard Holbrooke. In fact, the interview concluded with a holiday message from the Vice President to the service members serving in Iraq. These statements were not a direct assertion of fact that in all probability had to be confirmed by the government, or are easily rebutted by similar assertions.

H. The statement made by the Honorable John Conyers on 16 December 2010, during a Congressional hearing on the Espionage Act and the Legal and Constitutional Issues raised by Wikileaks, is not admissible under MRE 801(d)(2)(D) and the Court declines to judicially notice the statement. The statement is not an assertion of fact, it is one of personal belief (“We are too quick to accept government claims of risk to national security.”) Despite the formal circumstances under which the statements were made (e.g. an on-the-record committee hearing) the Court finds the primary purpose of the statement is not an assertion of unambiguous, factual matters, but a political one. Congressman Conyers was attempting to get the public and the press to “slow down and take a closer look” at the alleged security violations. These statements were not a direct assertion of fact that in all probability had to be confirmed by the government, or is easily rebutted by similar assertions. The statement sought to be introduced by the Defense is primarily hearsay within hearsay, as Congressman Conyers is quoting Secretary Gates. Congressman Conyers’ remarks regarding his perspective on government leaks is irrelevant to any issue of material fact in the case. Finally, this Court finds an additional impediment to admissibility of this statement, as the declarant is a member of the legislative, not executive, branch of government, and the legislature is not a party-opponent in the proceeding. *United States v. North*, 910 F.2d 843, 906-911 (D.C. Cir. 1990).

9. Admissibility of Statements a Public Records Under MRE 803(8).

A. As an additional basis for admission, the Court finds the 16 August 2010 letter from Secretary Gates admissible under MRE 803(8)(A). It is a record of activities setting forth the activities of the Department of Defense.

B. The remaining statements are not admissible under MRE 803(8)(A). Newspaper articles are not public records. Press releases by Government officials under the circumstances of this case do not set forth the activities of the agency. If such press releases were admissible under MRE 803(8)(A), such pronouncements by Government officials offered by the Government against the accused would be similarly admissible. Finally, a Congressional record could be admissible under MRE 803(8)(A) if relevant. The opening statement and the personal opinion of Congressman Conyers regarding his perspective on government leaks is irrelevant to any issue of material fact during sentencing proceedings.

10. Admissibility of Comments Made by Government Officials for a non-hearsay purpose.

The Court finds the statements made by Mr. Morrell, President Obama, and Secretary Gates in enclosures A-C of the 13 September 2012 Defense Supplement are also admissible as non-hearsay in that the fact that the public statements of these Government officials were made is circumstantial evidence of minimized damage caused by the alleged Wikileaks disclosures. Similarly, the statements by Secretary Gates and Secretary Clinton made in DoD and DoS press releases (enclosures D and E) are similarly admissible for the non-hearsay purpose. The statements by Secretary Clinton and Vice President Biden (enclosures F and G) are similarly admissible for the non-hearsay purpose only if the newspaper article within which the statements appear qualify for a hearsay exception. The statement by Congressman Conyers, Jr. in the Congressional record (enclosure H) is not admissible for a non-hearsay purpose because his

personal opinion on government leaks is irrelevant to any issue of material fact during sentencing proceedings.

11. Admissibility of Comments Made by Government Officials in Newspaper Articles under MRE 804, 803(6), and 807.

A. The statements made by government officials in newspaper articles or articles published on the internet are hearsay within hearsay. Newspaper articles do not qualify as business records under MRE 803(6). *U.S. v. Robinson*, 43 MJ 501 (A.F. Ct. Crim. App. 1992); *U.S. v. Michtavi*, 155 Fed. Appx. 433 (11th Cir. 2005); *Nooner v. Norris*, 594 F.3d. 592 (8th Cir. 2010). Thus, statements made in newspaper articles where the reporter is not produced as a witness are hearsay within hearsay even if there is a hearsay exception or the statement is admitted for a non-hearsay purpose.

B. The newspaper articles at issue are also not admissible as residual hearsay under MRE 807. Residual hearsay should be used sparingly and requires that the statement be more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts. See *U.S. v. Kindle*, 45 MJ 284 (CAAF 1996) citing *Larez v. City of Los Angeles*, 946 F.2d 630, 644 (9th Cir. 1991) (testimony of newspaper reporters more probative than copies of newspaper articles). Additionally, there is no way to know whether the government officials quoted were quoted in part or in toto. Finally, the online interview of Vice President Biden at enclosure G is undated. None of the newspaper articles at issue bears the circumstantial guarantees of trustworthiness required for admissibility under MRE 807.

Conclusions of Law: Sentencing

Should the Defense move the Court to relax the rules of hearsay and authentication pursuant to RCM 1001(C)(3), the Court will permit the Defense to admit the statements in enclosures D-G in extenuation or mitigation or both at sentencing. The Court will take judicial notice of the existence of the statements in D-F. The Court will not take judicial notice of the existence of the interview at enclosure G unless the Defense provides evidence of the date of the interview was made to the Court. Relaxation of the rules under RCM 1001(c)(3) does not relax the rules of relevance. The statement by Congressman Conyers, Jr. in enclosure H is not relevant for sentencing and is not admissible under relaxed rules.

Ruling: The Defense motion for Judicial Notice of Public Statements is Granted in Part.

1. The statements by Mr. Morrell, President Obama, and Secretary Gates in enclosures A-C are admissible as substantive evidence and the Court will take Judicial Notice of the press releases in enclosures A and B and of the letters in enclosure C.

2. The statements in enclosures A – C and the statements by Secretary Gates and Secretary Clinton at enclosures D and E are admissible for a non-hearsay purpose as public statements made by government officials that provide circumstantial evidence of minimized damage caused by the alleged Wikileaks disclosures. The Court will take judicial notice of the existence of the press releases including the statements.

3. The statements made by Secretary Clinton and Vice President Biden in enclosures F and G are hearsay within hearsay and are not admissible for the non-hearsay purpose in paragraph 2 unless the Defense requests the rules be relaxed for these statements under RCM 1001(c)(3). If the rules are relaxed the Court will take judicial notice of the newspaper articles in enclosure F. If the Defense provides evidence of the date of the interview of Vice President Biden at enclosure G, the Court will take judicial notice of the interview.

4. The statement by Congressman Conyers, Jr. is not relevant and is not admissible.

So **Ordered** this 18th day of October 2012.



DENISE R. LIND
COL., JA
Chief Judge, 1st Judicial Circuit

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

REQUIREMENTS
FOR DEFENSE NOTICE UNDER
MRE 505(h)(3): CHARGED
DOCUMENTS AND WITNESSES

18 October 2012

I. The Law

A. The Protective Order

The Court signed the Protective Order for Classified Information on 16 March 2012. *See* Appellate Exhibit XXXII. Under paragraph 3(l), the defense is required "to provide the trial counsel with the names of any intended recipient(s) and notice of the classified information that is expected to be disclosed or elicited pursuant to MRE 505(h)(3)." Appellate Exhibit XXXII, at 6.

B. MRE 505

Under MRE 505(h)(1), if the accused reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with a court-martial proceeding, he must provide notice to the trial counsel in writing of his intention. MRE 505(h)(1). This notice must include a brief description of the classified information and "must state, with particularity, which items of classified information [the accused] reasonably expects will be revealed by his defense." MRE 505(h)(3). A general statement "of the areas about which evidence may be introduced" is not sufficient. *Id.*

The accused's notice under MRE 505(h) allows the prosecution to consider the relevance of the classified information and, if required, motion the court for an *in camera* proceeding concerning the use at any proceeding of the classified information identified by the accused. *See* MRE 505(i)(2).

In order to obtain an *in camera* proceeding, the prosecution must be able to demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security. MRE 505(i)(3). This showing is typically achieved through a classification review of the information identified by the defense notice to the prosecution. *See* MRE 505(i)(3) ("The affidavit shall demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute, or regulation."). Classified information is not subject to disclosure unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. MRE 505(i)(4)(B).

By way of example, in this case, the starting point for specificity for documentary evidence could be a unique report key for CIDNE records or a unique message record number

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for Department of State cables. In any event, if it is unclear as to which specific items of classified information are at issue, the United States cannot make a determination whether to concede the relevance, necessity, or admissibility of the information or, in the alternative, request a classification review from the relevant OCA and move the court for an *in camera* proceeding under MRE 505(i).

Further, without knowing the witnesses the defense intends to use to disclose classified information during trial, the prosecution is not fully able to contemplate what other classified information may be revealed by cross-examination, which could potentially vary by witness, or various other issues raised by the disclosure of classified information.

II. Outstanding Notice Requirements IAW the Protective Order and MRE 505

The prosecution requires the following notice under the protective order and MRE 505:

a. Notice of classified information the defense intends to discuss with its own witnesses during interviews and notice of classified information the defense intends to elicit from its own witness during trial. This notice should identify the specific witness, the specific classified document(s) the defense intends to discuss with its witness, and any other potentially classified information the defense intends to either disclose to the witness or intends to elicit from the witness during interviews and during trial.

b. Notice of classified information the defense intends to discuss with Government witnesses during interviews. This notice should identify the specific witness, the specific classified document(s) the defense intends to discuss with the witness, and any other potentially classified information the defense intends to either disclose to the witness or intends to elicit from the witness during interviews.

c. Notice of classified information the defense intends to disclose during trial through Government witness testimony. This notice should identify the specific witness, the specific classified document(s) the defense intends to discuss with the witness, and any other potentially classified information the defense intends to elicit from the witness during trial.

III. Importance of Adequate Notice

Adequate notice drives the procedures under MRE 505. It focuses the issues for the parties and the Court and contributes to the efficiency of the proceedings. Without adequate notice, the prosecution is left to guess what the accused means by the notice provided and results in delays of the Original Classification Authorities' decision whether to authorize disclosure or invoke the privilege. That uncertainty delays the classification review process, which in turn delays the ability of the prosecution to motion the Court to hold an *in camera* proceeding under MRE 505(i), if the privilege is invoked.

IV. Procedural Steps

The following are the procedures derived from MRE 505(h)(3) that the defense must follow in order to use classified information during witness interviews and to disclose at trial:¹

a. STEP 1: The defense must provide adequate notice, including identifying with specificity what classified information is at stake and with what witness. This includes documents and expected testimony. If the witness is not a government employee and does not have a security clearance, the prosecution may oppose the proposed disclosure or initiate a security clearance investigation. A security clearance investigation of a civilian unaffiliated with the United States Government could take a minimum of 60 days to process, if approved.

b. STEP 2: Assuming the information is relevant to the merits or sentencing, the prosecution must vet the information with the owning entity to determine if it is classified and/or properly classified.² If a preliminary review has not been initiated, the owning entity must conduct a preliminary classification review. This process may take approximately 45-60 days.

c. STEP 3: If the agency owning the information determines that it does not authorize disclosure of the information during trial, it must invoke the privilege. The prosecution must motion the court for an *in camera* proceeding concerning the use of the information at trial IAW MRE 505(i)(2). Prior to the motion, the prosecution must obtain an affidavit demonstrating the national security nature of the information. MRE 505(i)(3). This affidavit will likely be produced at the same time as the preliminary classification review described above in STEP 2. Additionally, the prosecution must consult with the head of the executive or military department or government agency to obtain authorization to claim the privilege. This process may take approximately 30-60 days, although the prosecution estimates 30 days in this case.

d. STEP 4: If the prosecution establishes the national security nature of the information by affidavit, and the head of the executive or military department or government agency directs the prosecution to invoke the privileged, the Court will conduct an *in camera* proceeding. Prior to the *in camera* proceeding, the prosecution will provide the defense notice of the information that will be at issue. Both parties must then be given the opportunity to file briefs on the issue. MRE 505(i)(4)(A).

V. Requested Timeline

The last MRE 505(h) notice was scheduled for 15 October 2012 with any MRE 505(h) motions to be filed on 7 December 2012 and responded to on 21 December 2012, with the MRE 505(i) litigation scheduled for the 14-18 January 2013 session. This schedule allotted almost sixty days to complete the processes discussed above, as the prosecution repeatedly represented,

¹ This list is meant to describe some of the contingencies surrounding the use of classified information in preparation for trial and at trial, and is not meant to be an exhaustive list. Due to the complexity of using classified information in preparation for and at trial, it is impossible to plan for every contingency.

² This does not apply to information that already has a classification review, e.g., the charged documents.

inter alia, on its Proposed Case Calendars that any order to disclose classified information will likely require coordination with multiple federal organizations and estimated 45-60 days to coordinate a response. The prosecution recommends scheduling at least that amount of time between subsequent MRE 505(h) filings and a MRE 505(i) session.

The prosecution requests a **26 October 2012** suspense for the defense to notify the prosecution of the information the defense intends to discuss with its own witnesses during interviews and notice of classified information the defense intends to elicit from its own witnesses during trial. *See, supra*, Section IIa. This notice will likely take longer to process, as some of the defense witnesses with whom the defense intends to share classified information are civilians who do possess security clearances.³

The prosecution requests a **16 November 2012** suspense for the defense to notify the prosecution of the classified information the defense intends to discuss with prosecution witnesses during interviews, as well as notice of classified information the defense intends to disclose during trial through witness testimony. *See, supra*, Sections IIa, b.

The prosecution recommends that MRE 505(i) filings be scheduled for **11 January 2013**, with responses due on **18 January 2013**, and litigation on **28-29 January 2013**.

This timeline assumes that the privilege will not have to be invoked and does not reflect the possibility of the Court permitting disclosure of classified information under MRE 505(i)(4)(D) and the prosecution then requesting an alternative to disclosure.



ASHDEN FEIN
MAJ, JA
Trial Counsel

³ The defense stated in an RCM 802 conference on 17 October 2012 that they intend to share classified information with Ambassador Galbraith, COL(R) Morris Davis and Professor Benkler who are all civilian witnesses.

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Scheduling Order

18 October 2012

1. The Court is currently scheduling Article 39(a) sessions with the following default schedule at the request of the parties: two weeks for parties to file motions; two weeks for parties to file responses; five days for parties to file replies; and one week for the Court to review all pleadings before the start of the motions hearing. The time for filing replies was added after the first Article 39(a) session on 15-16 March 2012 because the Court received reply briefs the day before that session, the parties desire to continue to file replies, and the Court requires time to consider them.

2. Scheduling dates and suspense dates are set forth below. This schedule was coordinated with the parties. The trial schedule will be reviewed and updated as necessary at each scheduled Article 39(a) session.

- a. Immediate Action (21 February 2012 - 16 March 2012)
- b. Legal Motions, excluding Evidentiary Issues (29 March 2012 - 26 April 2012)
- c. Legal Motions (10 May 2012 - 8 June 2012)
- d. Interim Pretrial Motions (2 June 2012 - 25 June 2012)
- e. Pretrial Motions (7 June 2012 - 20 July 2012)
- f. Pretrial Motions (20 July 2012 - 30 August 2012)
- g. Pretrial Motions (24 August 2012 - 18 October 2012)
- h. Pretrial Motions (26 September 2012 - 2 November 2012)

(A) Article 39(a): 30 October 2012-2 November 2012

- (1) **Defense Additional Witness List #2 for Article 13 Motion**
 - (A) Witness List: 26 September 2012
 - (B) Government Objections (if any): 16 October 2012
 - (C) Defense Motion to Compel (if any): 22 October 2012
- (2) **Defense Motion for Speedy Trial, including Article 10 (PART I)**
 - (A) Filing: 19 September 2012
 - (B) Response: 10 October 2012

(C) Reply: 17 October 2012

(3) Defense Drafting of Plea Specifications and Notice of Maximum Punishments

(A) Filing: 23 October 2012

(B) Response: 26 October 2012

(4) Defense Interrogatories for Speedy Trial

(A) Date: 26 October 2012

(B) Response from OCA entities on whether they will respond to questions: 2 November 2012

(5) Defense MRE 505(h) Notification for Defense Witnesses

(A) Date: 26 October 2012

(6) Discussion of Storing all AEs in a Centralized Location

(A) Date: 30 October 2012

i. Pretrial Motions (19 October 2012 - 2 December 2012)

(A) Filing: 19 October 2012

(B) Response: 2 November 2012

(C) Reply: 9 November 2012

(D) Article 39(a): 27 November 2012 (@1300)-2 December 2012

(1) Defense Supplemental #2 for Article 13 Motion

(2) Defense Article 13 Motion (Article 39(a) only)

(3) Specifications for Plea and Maximum Punishments Litigation (if necessary)

(A) Filing: 5 November 2012

(B) Response: 16 November 2012

(C) Reply: 23 November 2012

(4) Government Response to Defense Interrogatories for Speedy Trial

(A) Filing: 16 November 2012

(5) Defense MRE 505(h) Notification for Government Witnesses

(A) Date: 16 November 2012

j. Pretrial Motions (16 November 2012 - 14 December 2012)

(A) Filing: 16 November 2012

(B) Response: 30 November 2012

(C) Reply: 5 December 2012

(D) Article 39(a): 10-14 December 2012

- (1) **Def Motion for Speedy Trial, including Article 10 (PART 2) (Article 39(a) only)**
- (2) **Defense Supplemental Witness List for Sentencing**
(A) Filing: 9 November 2012
- (3) **Defense Witness List Litigation¹**
(A) Govt Objection to Def Witnesses (Initial and Supplemental): 16 November 2012
(B) Motion to Compel Production: 23 November 2012
(C) Response: 5 December 2012
- (4) **Government Motion to Compel Discovery (if any)**
- (5) **Defense Motion to Compel Discovery #4 (if necessary)**
- (6) **Additional Requests for Judicial Notice**
- (7) **Pre-Qualification of Experts**
- (8) **Motions *in Limine* (Supplemental, Including any Classified Information) (if necessary)**
- (9) **Providence Inquiry²**
- (10) **Disclosure of RCM 914 Material (based on Supplemental Govt Witness List and Defense Witness List)**
(A) Date: 5 December 2012

k. Pretrial Motions (7 December 2012 - 18 January 2013)

- (A) Filing: 21 December 2012
 - (B) Response: 4 January 2013
 - (C) Reply: 9 January 2013
 - (D) Article 39(a): 14-18 January 2013
- (1) **Supplemental Government Witness List (if necessary)**
(A) Date: 14 December 2012
 - (2) **Production of Compelled Discovery from Defense**
(A) Date: 14 December 2012
 - (3) **Grunden Hearing for Government Classified Information**

¹ This includes litigating the defense expert witnesses listed on the 15 October 2012 filing. The filings will be made assuming that all charges will go forward as charged.

² The Defense must also make final forum selection. The prosecution requested the panel be notified no less than sixty days prior to trial, in order to coordinate for extended special duty and travel.

(A) Government Notice: 4 January 2013

l. Pretrial Motions (28-29 January 2013)

(1) **Grunden Hearing for Defense Classified Information**

(2) **Litigation Concerning MRE 505(h) and MRE 505(i) (if not previously resolved)**

(A) Filing: 11 January 2013

(B) Response: 18 January 2013

(3) **Completion of Security Clearance Checks for Witnesses (as necessary)**

m. Trial by MJ Alone (4 February 2013 - 15 March 2013)

Trial: 4 February 2013-15 March 2013

So **Ordered** this 18th day of October 2012.



DENISE R. LIND

COL, JA

Chief Judge, 1st Judicial Circuit

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Request
for Leave until 10 December 2012
to Provide Detailed Plan for
Maintaining Appellate Exhibits

25 October 2012

1. The United States requests leave of the Court until 10 December 2012 to set forth a detailed plan for maintaining the classified appellate exhibits (AEs) that will not accompany the record of trial. During a telephonic RCM 802 conference on 5 October 2012, the Court instructed the United States to present a plan to the Court to maintain classified AEs not accompanying the record of trial (ROT) in one location under the custody of one custodian with a systematic periodic review to ensure accountability of the AEs through any appellate review. See Enclosure (email from the Court summarizing the telephonic RCM 802 conference).

2. The United States is in the process of completing a coordinated plan with the Clerk of Court and the entities owning the classified AEs not accompanying the ROT to ensure that the AEs are maintained and their whereabouts systematically reviewed regardless of personnel changes. Based on the coordination necessary between the entities owning the AEs and with the entities maintaining the ROT, the United States needs additional time to finalize a plan that is detailed enough to ensure proper accountability and is acceptable to all interested parties.

3. This request will not necessitate a delay in the proceedings as the continued effort to finalize a course of action will occur concurrently with the scheduled pretrial motions process and, in the meantime, all AEs will be maintained with the current points of contact and tracked by the United States. There will, therefore, be no prejudice to the defense.



ASHDEN FEIN
MAJ, JA
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 25 October 2012.



ASHDEN FEIN
MAJ, JA
Trial Counsel

Encl
Court Email, dated 5 Oct 12

APPELLATE EXHIBIT 359
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[illegible]

11

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

11

—

25 October 2012

From: Lind, Denise R COL USARMY (US)
To: Fein, Ashden MAJ USARMY MDW (US)
Cc: David Coombs; Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia Ann (Trisha Williams-Butler) CIV USARMY USAMDW (US); Jefferson, Dashaun MSG USARMY (US); Moore, Katrina R SEC USARMY (US); Raffel, Michael J SEC USARMY (US)
Subject: 5 October 2012 - telephonic rcm 802 (UNCLASSIFIED)
Date: Friday, October 05, 2012 3:03:33 PM

Classification: UNCLASSIFIED

Caveats: NONE

Counsel,

The Court scheduled a telephonic RCM 802 session with the parties to discuss a 27 September 2012 motion filed by the Defense that was not on the trial schedule to make any necessary scheduling adjustments to maintain the current trial schedule. The telephonic RCM 802 conference occurred on 5 October 2012 at 1300.

Present were: COL Lind, MJ; MAJ Fein, CPT Overgaard, CPT Morrow, CPT White, Government; Mr. Coombs, Defense

Both parties consented to participating in the telephonic RCM 802 conference

The following new suspense dates were established:

1. The Court granted the Government request for continuance to 16 October 2012 to file the joint chronology.
2. The Government will file a redacted version of AE 264 (ex parte due diligence filing) with the Court by 12 October 2012.
3. The Government will schedule an ex parte in camera session with the Court on 12 October regarding the Government's 14 September 2012 MRE 505(g) motion with respect to the FBI records.
4. During the 29 October - 2 November 2012 article 39(a) session, the Government will present a plan to the Court to maintain classified AE not accompanying the ROT in one location under the custody of one custodian with a systematic periodic review to ensure accountability of the AE through any appellate review.

This email synthesizes what occurred during the telephonic RCM 802 conference. Either party may supplement the court's synopsis of what occurred.

The following issues were discussed:

1. In its 27 September 2012 motion, the Defense moved the Court to order the Government to produce its speedy trial chronology in a Microsoft word or spreadsheet format and to disclose AE 264 the Government's ex parte due diligence filing with the Court. The Government responded to the motion on 2 October 2012 advising the Court that the Government provided the chronology to the Defense in a searchable PDF format and objected to giving the Defense the chronology in a word or spreadsheet format because the original contains classified information and work product of the Government. The Government also objected to disclosing the due diligence filing to the Defense because the information the defense seeks is in the Government chronology, most of the information in the due diligence filing will be in the Government response to the Defense speedy trial motion, some of the information in the due diligence filing is classified and the Government does not have authority to disclose it, and some of the information disclosed to the Court in the due diligence filing is Government work product.

a. Speedy Trial Chronology. The Court advised the parties that the speedy trial chronology should be in a format where both sides have input and should contain all of the relevant dates the parties agree to. The parties will use enclosure 1 to the defense speedy trial motion in word format as a beginning. The Government requested a continuance to file the joint speedy trial chronology until 17

October 2012. The Defense did not object. The Court granted the Government request for continuance to 16 October 2012.

b. Due Diligence Filing Disclosure to the Defense. The Court ordered the Government to produce a version of the due diligence disclosure with the classified information and work product the Government believes should be redacted by Friday, 12 October 2012 in hardcopy to the Court. The Government's response to the speedy trial motion is due Wednesday, 10 October 2012. The Court will have the Government response to the speedy trial motion and the redacted due diligence filing and will rule on whether to require disclosure.

2. Maintaining classified AE. The Government moved the Court to allow 2 agencies maintaining sensitive classified information that are AEs to maintain the information at the agency. The defense did not object. The Court advised the Government that maintaining accountability of the complete ROT to include all of the exhibits through appellate review, should that occur, is an overriding interest of the Government, Defense, and the Court. The Government will present the Court with a plan to have such agency information located at one location, under the custody and control of one custodian, with a procedure for systematic review that takes into account the PCS movement of personnel involved in the trial to ensure the records are accounted for. The Government will have this have information - gov't plan for one location, one custodian, systematic review to ensure records remain available through any appellate review. The Government will advise the Court of its plan with respect to such records during the 29 October - 2 November 2012 article 39(a) session.

3. Speedy Trial Witnesses. The Government asked whether the 17-18 October 2012 article 39(a) session should be extended because the Defense maintains its request for 86 witnesses. The Defense maintained its request for witnesses from 63 agencies are necessary because the Government representations to the Court regarding ONCIX are inconsistent with the ONCIX entries in the Government chronology on 13 January and 18 February 2011. The Government disagreed with that characterization. The Court advised the parties that the issue would be litigated at the Article 39(a) session and that the Article 39(a) session need not be extended because the arguments for/against production of most of the requested defense witnesses would be the same for the same category of witnesses requested - e.g. the 63 agency witnesses. Neither party disagreed. The Defense maintained the individual OCA witnesses would be necessary because the OCA reviews were a justification in most of the approved Article 32 delays.

4. Government proposed MRE 505(g) limited disclosure: FBI file. On 14 September 2012, the Government moved the Court to allow limited disclosure of the redacted FBI investigative file pertaining to the accused. The Court advised the Government that the Court reviewed the MRE 505(g) limited disclosure and requires an ex parte, in camera proceeding with the Government to be recorded by a court reporter to address the proposed limited disclosure. The Government advised the Court that it would schedule the session on 12 October 2012.

D
DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

**DEFENSE REVISED NOTICE OF
PLEA AND FORUM**

MANNING, Bradley E., PFC)

U.S. Army, [REDACTED])

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

DATED: 23 October 2012

In accordance with the Rules of Practice before Army Courts-Martial, PFC Manning, by and through his attorney hereby serves notice to the Government and Court of anticipated plea, requested forum, and expected motions. By way of this plea, the Defense waives any objection under *United States v. Borunda*, 67 M.J. 607 (A.F.Ct.Crim.App. 2009) regarding whether Clause 1 and 2 of Article 134 is a lesser included offense of Specifications 2,3,5,7,9,10,11, and 15 of Charge II. The Defense also waives any objection that Article 121, UCMJ, preempts Clause 1 and 2 of Article 134 as a lesser included offense of Specifications 4,6,8,12, and 16.

Plea:

To the Specification of Charge I and to Charge I: Not Guilty;

To Specification 1 of Charge II: Guilty, except the words and figures "1 November 2009" and "27 May 2010", substituting therefore the words and figures "3 February 2010" and "4 May 2010"; further excepting the words "wantonly cause to be published on the internet intelligence belonging to the United States government, having knowledge that intelligence published on the internet is accessible to the enemy", substituting therefore the words "wrongfully gave information belonging to the United States government to WikiLeaks, knowing that WikiLeaks might publish the information on the internet, having knowledge that information published on the internet is accessible to anyone with internet access,"; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 1 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 3 February 2010 and on or about 4 May 2010, wrongfully gave information belonging to the United States government to WikiLeaks, knowing that WikiLeaks might publish the information on the internet, and having knowledge that information published on the internet is accessible to anyone with internet access, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

APPROPRIATE EXHIBIT 360
FOR THE DEFENSE
FILED _____

To Specification 2 of Charge II: Guilty, except the words and figures "15 February 2010" and "5 April 2010", substituting therefore the words and figures "14 February 2010" and "21 February 2010"; further excepting the words "information relating to the national defense, to wit:,"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted," substituting therefore the words "did willfully communicate"; further excepting the words and figures, "in violation of 18 U.S. Code Section 793(e)."; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 2 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 14 February 2010 and on or about 21 February 2010, having unauthorized possession of a video file named "12 JUL 07 CZ ENGAGEMENT ZONE 30 CG Anyone.avi", did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 3 of Charge II: Guilty, except the words and figures "22 March 2010" and "26 March 2010", substituting therefore the words and figures "17 March 2010" and "22 March 2010"; further excepting the words "information relating to the national defense, to wit:,"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted," substituting therefore the words "did willfully communicate"; further excepting the words and figures "in violation of 18 U.S. Code Section 793(e)."; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 3 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 17 March 2010 and on or about 22 March 2010, having unauthorized possession of more than one classified memorandum produced by a United States government intelligence agency, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 4 of Charge II: Guilty, except the words and figures "between on or about 31 December 2009 and on or about 5 January 2010", substituting therefore the words and figures, "on or about 5 January 2010"; further excepting the words and figures, "steal, purloin, or knowingly convert to his use or the use of another a record or thing of value of the United States or of a department or agency thereof, to wit: the Combined Information Data Network Exchange Iraq database containing more than 380,000 records belonging to the United States government, of a value of more than \$1,000, in violation of 18 U.S. Code Section 641," substituting therefore the words and figures "remove from a tactical sensitive compartmentalized information facility, for an unauthorized purpose, more than 380,000 records belonging to the United States government from the Combined Information Data Network Exchange Iraq database, of a value

of \$500 or less.”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 4 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 5 January 2010, remove from the tactical sensitive compartmented information facility, for an unauthorized purpose, more than 380,000 records belonging to the United States government from the Combined Information Data Network Exchange Iraq database, of a value of \$500.00 or less, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 5 of Charge II: Guilty, except the words and figures “31 December 2009” and “9 February 2010”, substituting therefore the words and figures “5 January 2010” and “3 February 2010”; further excepting the words “information relating to the national defense, to wit.”; further excepting the words “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted.”, substituting therefore the words, “did willfully communicate”; further excepting the words and figures “in violation of 18 U.S. Code Section 793(e).”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 5 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 5 January 2010 and on or about 3 February 2010, having unauthorized possession of more than twenty classified records from the Combined Information Data Network Exchange Iraq database, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 6 of Charge II: Guilty, except the words and figures “between on or about 31 December 2009 and on or about 8 January 2010”, substituting therefore the words and figures “on or about 5 January 2010”; further excepting the words and figures “steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Combined Information Data Network Exchange Afghanistan database containing more than 90,000 records belonging to the United States government, of a value of more than \$1,000, in violation of 18 U.S. Code 641.”, substituting therefore the words and figures “remove from the tactical sensitive compartmentalized information facility, for an unauthorized purpose, more than 90,000 records belonging to the United States government from the Combined Information Data Network Exchange Afghanistan database, of a value of \$500.00 or less.”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 6 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 5 January 2010, remove from the tactical sensitive compartmented information facility, for an unauthorized purpose, more than 90,000 records belonging to the United States government from the

Combined Information Data Network Exchange Afghanistan database, of a value of \$500.00 or less, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 7 of Charge II: Guilty, except the words and figures “31 December 2009” and “9 February 2010”, substituting the words and figures “5 January 2010” and “3 February 2010”; further excepting the words “information relating to the national defense, to wit.”; further excepting the words “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,”, substituting therefore the words “did willfully communicate”; further excepting the words and figures “in violation of 18 U.S. Code 793(e).”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 7 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 5 January 2010 and on or about 3 February 2010, having unauthorized possession of more than twenty classified records from the Combined Information Data Network Exchange Afghanistan database, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 8 of Charge II: Guilty, except the words and figures “steal, purloin, or knowingly convert to his use or the use of another, a record of thing of value of the United States or of a department or agency thereof, to wit: a United States Southern Command database containing more than 700 records belonging to the United States government, of a value of more than \$1,000, in violation of 18 U.S. Code 641,”, substituting therefore the words “remove from the tactical sensitive compartmentalized information facility, for an unauthorized purpose, more than 700 records belonging to the United States government from the United States Southern Command database, of a value of \$500 or less,” to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 8 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 8 March 2010, remove from the tactical sensitive compartmented information facility, for an unauthorized purpose, more than 700 records belonging to the United States government from the United States Southern Command database, of a value of \$500.00 or less, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 9 of Charge II: Guilty, except the words and figures “between on or about 8 March 2010 and on or about 27 May 2010”, substituting therefore the words and figures “on or about 8 March 2010”; further excepting the words “information relating to the national defense, to wit.”; further excepting the words “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,”,

substituting therefore the words “did willfully communicate”; further excepting the words and figures “in violation of 18 U.S. Code 793(e)”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 9 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 8 March 2010, having unauthorized possession of more than three classified records from a United States Southern Command database, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 10 of Charge II: Guilty, except the words and figures “11 April 2010” and “27 May 2010”, substituting therefore the words and figures “10 April 2010” and “12 April 2010”; further excepting the words “information relating to the national defense, to wit.”; further excepting the words “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted.”, substituting therefore the words “did willfully communicate”; further excepting the words and figures “in violation of 18 U.S. Code Section 793(e)”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 10 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 10 April 2010 and on or about 12 April 2010, having unauthorized possession of more than five classified records relating to a military operation in Farah Province, Afghanistan occurring on or about 4 May 2009, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 11 of Charge II: Guilty, except the words and figures “1 November 2009” and “8 January 2010”, substituting therefore the words and figures “10 April 2010” and “12 April 2010”; further excepting the language “information relating to the national defense, to wit.”; further excepting the language “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted.”, substituting therefore the language “did willfully communicate”; further excepting the language “in violation of 18 U.S. Code Section 793(e)”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 11 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 10 April 2010 and on or about 12 April 2010, having unauthorized possession of a file named “BE22 PAX.zip” containing a video named “BE22 PAX.wmv”, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 12 of Charge II: Guilty, except the words and figures "steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Department of State Net-Centric Diplomacy database containing more than 250,000 records belonging to the United States government, of a value of more than \$1,000, in violation of 18 U.S. Code Section 641", substituting therefore the words and figures "remove from the tactical sensitive compartmentalized information facility, for an unauthorized purpose, more than 250,000 records belonging to the United States government from the Department of State Net-Centric Diplomacy database, of a value of \$500.00 or less," to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 12 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 28 March 2010 and on or about 4 May 2010, remove from the tactical sensitive compartmented information facility, for an unauthorized purpose, more than 250,000 records belonging to the United States government from the Department of State Net-Centric Diplomacy database, of a value of \$500.00 or less, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 13 of Charge II: Guilty, except the words and figures "27 May 2010", substituting therefore the words and figures "4 May 2010"; further excepting the words "knowingly exceeded authorized access on a Secret Internet Protocol Router Network computer, and by means of such conduct having obtained information that has been determined by the United States government pursuant to an Executive Order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, to wit:"; substituting therefore the words "unauthorized possession of"; further excepting the words "willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted", substituting therefore the words "did willfully communicate"; further excepting the words "with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1)"; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 13 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 28 March 2010 and on or about 4 May 2010, having unauthorized possession of more than seventy-five classified United States Department of State cables, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 14 of Charge II: Guilty, except the words and figures "15 February 2010" and "18 February 2010", substituting therefore the words and figures "14 February 2010" and "15 February 2010"; further excepting the words "knowingly exceeded authorized access on a Secret Internet Protocol Router Network computer, and by means of such conduct having

obtained information that has been determined by the United States government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, to wit:”, substituting therefore the words, “unauthorized possession of”; further excepting the words “willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted”, substituting therefore the words “did willfully communicate”; further excepting the words and figures “with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1).”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty;

(Revised Specification 14 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, between on or about 14 February 2010 and on or about 15 February 2010, having unauthorized possession of a classified United States Department of State cable titled “Reykjavik-13”, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 15 of Charge II: Guilty, except the words and figures “between on or about 15 February 2010 and on or about 15 March 2010”, substituting therefore the words and figures “on or about 8 March 2010”; further excepting the words “information relating to the national defense, to wit:”; further excepting the words “with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,”, substituting therefore the words “did willfully communicate”; further excepting the words and figures “in violation of 18 U.S. Code Section 793(e).”; to the excepted words and figures, Not Guilty; to the substituted words and figures, Guilty.

(Revised Specification 15 of Charge II: In that Private First Class Bradley E. Manning, U.S. Army, did, at or near Contingency Operating Station Hammer, Iraq, on or about 8 March 2010, having unauthorized possession of a classified record produced by a United States Army intelligence organization, dated 18 March 2008, did willfully communicate the said information, to a person not entitled to receive it, such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces.)

To Specification 16 of Charge II: Not Guilty.

To Charge II: Guilty.

To Specification 1 of Charge III: Not Guilty.

To Specification 2 of Charge III: Not Guilty.

To Specification 3 of Charge III: Not Guilty.

To Specification 4 of Charge III: Not Guilty.

To Specification 5 of Charge III: Guilty.

To Charge III: Guilty.

Forum:

Trial by Military Judge Alone.

Maximum Punishment:

The maximum punishment authorized in this case, based solely on PFC Manning's guilty plea is: to forfeit all pay and allowances, to be reduced to Private, E-1, to be confined for 1,290 months (107 years and six months), and to be dishonorably discharged from the service.

Expected Motions:

Motion to Dismiss: Speedy Trial under Article 10 and RCM 707;

Motion to Dismiss: Unlawful Pretrial Punishment under Article 13; and

Motion to Dismiss: Unreasonable Multiplication of Charges for Findings and Sentencing (after announcement of Findings).

Respectfully submitted,



DAVID EDWARD COOMBS
Civilian Defense Counsel

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

**DEFENSE CALCULATION OF
MAXIMUM PUNISHMENT**

MANNING, Bradley E., PFC)

U.S. Army,)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

DATED: 25 October 2012

1. The Defense calculates the maximum punishment authorized in this case, based solely on PFC Manning's guilty plea to be a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1,290 months (107 years and 6 months). The Defense reaches this calculation as follows:

a) Specification 1 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years. Court's Ruling at Appellate Exhibit CCXIX.

b) Specification 2 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

c) Specification 3 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

d) Specification 4 of Charge II: Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year. Court's Ruling at Appellate Exhibit CCXIX which determined that the clause 1 and 2 offenses charged using the elements of 18 U.S.C. Section 641 are closely related to Article 121, UCMJ, Larceny of Military Property of a value in excess of \$500.00. Since PFC Manning is pleading to military property of a value of \$500.00 or less, the Defense looks to the maximum punishment under Article 121, UCMJ, Larceny of Military Property of a value of \$500.00 or less. The maximum punishment for that offense is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

e) Specification 5 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

f) Specification 6 of Charge II: Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year. Court's Ruling at Appellate Exhibit CCXIX which determined that the clause 1 and 2 offenses charged using the elements of 18 U.S.C. Section 641 are closely related to Article 121, UCMJ, Larceny of Military Property of a value in excess of

\$500.00. Since PFC Manning is pleading to military property of a value of \$500.00 or less, the Defense looks to the maximum punishment under Article 121, UCMJ, Larceny of Military Property of a value of \$500.00 or less. The maximum punishment for that offense is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

g) Specification 7 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

h) Specification 8 of Charge II: Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year. Court's Ruling at Appellate Exhibit CCXIX which determined that the clause 1 and 2 offenses charged using the elements of 18 U.S.C. Section 641 are closely related to Article 121, UCMJ, Larceny of Military Property of a value in excess of \$500.00. Since PFC Manning is pleading to military property of a value of \$500.00 or less, the Defense looks to the maximum punishment under Article 121, UCMJ, Larceny of Military Property of a value of \$500.00 or less. The maximum punishment for that offense is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

i) Specification 9 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

j) Specification 10 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

k) Specification 11 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

l) Specification 12 of Charge II: Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months. Court's Ruling at Appellate Exhibit CCXIX which determined that the clause 1 and 2 offenses charged using the elements of 18 U.S.C. Section 641 for this offense are closely related to Article 121, UCMJ, Larceny of Non-Military Property of a value in excess of \$500.00. Since PFC Manning is pleading to non-military property of a value of \$500.00 or less, the Defense looks to the maximum punishment under Article 121, UCMJ, Larceny of Non-Military Property of a value of \$500.00 or less. The maximum punishment for that offense is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

m) Specification 13 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

n) Specification 14 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

o) Specification 15 of Charge II: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years. Court's Ruling at Appellate Exhibit CCXIX.

p) Specification 5 of Charge III: Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years. Article 92, UCMJ, Violation of or failure to obey lawful general order or regulation.

2. The Defense has covered the maximum punishment with PFC Manning. PFC Manning understands that based upon his plea of guilty alone, this Court could sentence him to the maximum punishment as stated above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Coombs', with a stylized flourish at the end.

DAVID EDWARD COOMBS
Civilian Defense Counsel

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES OF AMERICA

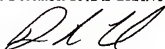
v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

)
)
) **RULING: Prosecution Request**
) **for Leave until 10 December 2012**
) **to Provide Detailed Plan for**
) **Maintaining Appellate Exhibits**
)
)
) **26 October 2012**

On 25 October 2012 the Government requested leave of the Court until 10 December 2012 to provide the Court with a detailed plan to maintain the classified appellate exhibits (AEs) that will not accompany the record of trial. On 5 October 2012, the Court ordered the Government to present to the Court NLT the article 39(a) session scheduled to begin 30 October 2012, a plan to maintain classified AEs not accompanying the record of trial (ROT) in one location under the custody of one custodian with a systematic periodic review to ensure accountability of the AEs through any appellate review. The Defense does not oppose.

The Government request for leave of Court until 10 December 2012 is **GRANTED**.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

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APPELLATE EXHIBIT
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UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Prosecution Notification
to the Court of
Federal Bureau of Investigation,
Department of State, and
Department of Homeland Security
Records

25 October 2012

On 25 October 2012, the United States produced to the defense the following materials: (1) Federal Bureau of Investigation (FBI) records for which the Court approved limited disclosure under Military Rule of Evidence (MRE) 505(g)(2) in its ruling dated 18 October 2012 (BATES 00523806-00525868); (2) Department of State (DOS) records for which the Court approved limited disclosure under MRE 505(g)(2) in its ruling dated 18 October 2012 (BATES 00525870-00526366); and (3) one Department of Homeland Security (DHS) record for which the Court approved limited disclosure under MRE 505(g)(2) in its ruling dated 28 September 2012 (BATES 00525869).

As of 25 October 2012, the United States has produced to the defense all FBI records, all non-captioned DOS records, and all DHS records that are discoverable or otherwise subject to production. Since 16 October 2012, all DOS captioned records have been available for inspection by the defense at the DOS facility.



ASHDEN FEIN
MAJ, JA
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 25 October 2012.



ASHDEN FEIN
MAJ, JA
Trial Counsel

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Prosecution Notification
to the Court of
Department of State Files

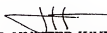
22 October 2012

As of 16 October 2012, the United States has made available for inspection by the defense all Department of State documents for which the Court approved limited disclosure under Military Rule of Evidence (MRE) 505(g)(2) in its rulings dated 28 September 2012 and 18 October 2012. The prosecution will disclose in classified discovery all non-captioned documents by 26 October 2012. All captioned documents are available for inspection at the Department of State.



J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 22 October 2012.



J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Disclosure
to the Defense

26 October 2012

On 26 October 2012, the United States filed an *in camera* motion requesting the Court consider a motion *in camera* and *ex parte* under MRE 505(g)(2) and for an additional protective order for classified information under MRE 505(g)(1). See Enclosure. The United States seeks to protect information relating to intelligence activities, intelligence sources or methods, and foreign relations or foreign activities of the United States, all within the national security interests of the United States.



ASHDEN FEIN
MAJ, JA
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 26 October 2012.



ASHDEN FEIN
MAJ, JA
Trial Counsel

Encl

Government *in camera* Motion (unclassified, redacted version)

APPELLATE EXHIBIT 345
PAGE REFERENCED: _____
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UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

) Government *in camera* Motion to
) Redact or Delete Classified Information
) from Evidence Made Available
) to the Accused under MRE 505(g)(2)
) and for an Additional Protective Order
) for Classified Information
) under MRE 505(g)(1)

) 26 October 2012

RELIEF SOUGHT

(U) COMES NOW the United States of America, by and through undersigned counsel, and respectfully requests this Court: (1) consider this motion and the enclosures *in camera* and *ex parte* under Military Rule of Evidence (MRE) 505(g)(2); (2) affirmatively authorize redactions and "deletions" of classified information from evidence made available to the defense; and (3) issue an additional protective order, under MRE 505(g)(1), precluding the defense and their forensic expert from accessing irrelevant "deleted" classified information on the digital media made available to the defense for examination.¹ The information sought to be redacted or deleted from discovery will not be used by the prosecution, is not relevant to this court-martial, is not favorable to the accused and material to guilt or punishment, or relevant and necessary for production under Rule for Courts-Martial (RCM) 703(f). The information is also not "necessary to enable the accused to prepare for trial." MRE 505(g)(2).

BURDEN OF PERSUASION AND BURDEN OF PROOF

(U) As the moving party, the United States has the burden of persuasion on any factual issue the resolution of which is necessary to decide the motion. RCM 905(c)(2). The burden of proof is by a preponderance of the evidence. RCM 905(c)(1).

FACTS²

[REDACTED]

¹ (U) For the purposes of this motion, the United States does not intend to actually "delete" any digital information, but impose digital restrictions, coupled with a Court order, which would prevent the defense and their computer forensic experts from accessing or viewing the "deleted" digital files. This process is described below. See *infra*.

² (U) For the purposes of this motion, the United States added footnotes, with appropriate Bates numbers, to any portion of the facts that reference classified material that has been provided to the defense in classified discovery.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ (U) This enclosure is Bates #: 00505250-00505252.

⁴ [REDACTED]

⁵ (U) A "7-zip" file is a file archive with a high compression ratio, similar to a "zip" file. See <http://www.7-zip.org/> (last accessed 27 September 2012).

[REDACTED]

[REDACTED]

(U) There is no evidence that the accused communicated directly with any terrorist or terrorist organization or that any terrorist or terrorist organization communicated directly with the accused.

WITNESSES/EVIDENCE

(U) The United States does not request any witnesses be produced for this motion. The prosecution requests that the Court consider the enclosures listed at the end of this motion.

LEGAL AUTHORITY AND ARGUMENT

[REDACTED]

(U) This motion is submitted affirmatively by the United States and not in response to a discovery request or motion to compel discovery. The defense has been aware of the general nature of this evidence since 8 November 2011, as this evidence was briefed to the defense during a presentation of the government's case prior to the Article 32 investigation. By affirmatively approaching the Court under MRE 505(g)(2), rather than wait for any potential defense discovery request or motion, the United States is seeking to prevent delay in an effort to move the case forward in accordance with the current calendar.

(U) If classified information is at issue in a court-martial, the United States may agree to disclose the classified information to the defense under a protective order. See MRE 505(g)(1). Additionally, the United States may motion the Court to "authorize (A) the deletion of specific

[REDACTED]

APPELLATE EXHIBIT _____
NOT REPRODUCED
PAGE ____ OF ____ PAGES

items of classified information from documents to be made available to the [accused], (B) the substitution of a portion or summary of the information for classified documents, or (C) the substitution of a statement admitting relevant facts that the classified information would tend to prove." MRE 505(g)(2). The military judge "shall authorize" these alternative forms, unless she determines "the disclosure of the classified information itself is necessary to enable the accused to prepare for trial." Id. If a motion is filed under MRE 505(g)(2), then upon request of the United States, the motion "shall" be considered by the military judge *in camera* and "shall not be disclosed to the accused." Id.

(U) The procedures outlined in MRE 505(g)(1) and (2) apply when the United States voluntarily discloses information and does not withhold classified information under MRE 505(c). If the United States intends to withhold information under MRE 505(c), then the United States must move for an *in camera* proceeding under MRE 505(i)(2), obtain an affidavit demonstrating that disclosure of the information reasonably could be expected to cause damage to the national security under MRE 505(i)(3), and follow the notice procedures outlined under MRE 505(i)(4). See MRE 505(i). For the purposes of this filing, the equity holder, through the prosecution, is voluntarily disclosing redacted documents and files, authorizing limited access to the digital media, and is not withholding any classified information under MRE 505(c) and MRE 505(i).

(U) The United States requests this Court authorize the redaction of classified information from documents previously provided to the defense in discovery by determining that the redacted information is not discoverable under any relevant standard.

[REDACTED]

[REDACTED]

(U) As stated above, the United States will not use any portion of these documents not disclosed to the defense during any portion of the trial. This includes rebuttal and rule of completeness if the defense introduces or references anything in the un-redacted portions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰ (U) "Slack space" is defined as the "space between the end of a file and the end of the disk cluster it is stored in". See http://www.pcmag.com/encyclopedia_term/0,2542,t=slack+space&i-56995,00.asp (last accessed 1 October 2012).

¹¹ [REDACTED]

[REDACTED]

(U) Should the Court find the deleted information is discoverable under RCM 701(a)(6) or Brady/Giglio, subject to production under RCM 703(f), or "necessary to enable the accused to prepare for trial" under MRE 505(g)(2), then the United States requests the opportunity to either (1) address the Court's findings with the relevant government agency to determine whether a different alternative under MRE 505(g)(2) is appropriate and file that alternative with the Court, or (2) allow for the relevant government agency to claim a privilege under MRE 505(c) and the United States to move for an *in camera* proceeding under MRE 505(i).¹²

(U) As stated earlier, the United States will not use any portion of the remaining digital files not disclosed to the defense during any portion of the trial.

(U) If the Court determines that remaining digital files are not discoverable under any relevant standard, and authorizes the "deletion" of classified information from certain digital media, then the United States requests this Court issue a protective order precluding the defense, including their forensic examiners, from examining any other file on the digital media, and precluding the defense from viewing the redacted contents of the documents during a forensic examination, if any.

(U) On 3 August 2012, the United States made forensic images of the digital media available to the defense and their security experts for forensic inspection, in order to ensure the defense has the ability to adequately examine the digital files that the United States intends to use as evidence. See Enclosure 9. To assist the defense and ensure proper accountability of the digital media, the United States acquired a classified forensic computer, with AccessData Lab 3.x installed as industry standard forensic analysis software. Using the AccessData Lab 3.x software, the United States can restrict access to certain documents and authorize access to other documents for anyone who uses the computer. Within the program, the process of restricting access is called "privileging." If the Court authorizes the deletion of the above information, then all remaining digital files, except the digital files the United States intends to use during trial, will not be accessible to the defense or their computer forensic examiner. This program and process will allow the defense and their computer forensic examiner to examine the metadata associated with the four relevant files which will be used by the United States, so the defense may validate the forensic process of pulling the files from the media and cross-examine the FBI forensic examiner, if they choose. The "privileging" has already occurred on the classified forensic computer. As such, the process will not take any additional time to complete if the Court authorizes this deletion.

(U) As a forensic examiner conducts analysis, he or she has access to the following information, along with being able to view the content, for the "unprivileged" digital files: file name; item number; acquisition MD5 and SHA1 hashes; the created date and time:

¹² (U) The United States seeks to protect information relating to intelligence activities, intelligence sources or methods, and foreign relations or foreign activities of the United States, all within the national security interests of the United States.

[REDACTED]

accessed date and time; modified date and time; "P-Size" for physical size; "L-Size" for logical size; file type, and the entire native file path.¹³ When a forensic examiner "clicks" on an "unprivileged" file to view the forensic metadata, the program allows the examiner to view the contents of the file without limitation. If the Court authorizes the redactions of the files referenced above, the forensic examiners would be able to scroll through the original documents on the digital media and view the *redacted* original content, essentially eliminating the purpose of the redactions. Therefore, the United States requests the Court issue the enclosed protective order, under MRE 505(g)(1), precluding the defense, including their forensic examiners, from examining the contents of the two above-mentioned files on the digital media. Specifically, the defense, including their forensic examiners should be precluded from viewing the contents of the redacted documents during a forensic examination, if any. See Enclosure 16. Additionally, the United States requests the Court order any defense forensic examination be conducted under the supervision of the Court Security Officer to ensure proper enforcement of the order.

¹³ (U) The following definitions are derived from Enclosure 13, which is a glossary of terms found in Encase Forensic Software, which uses industry standard terms also found in AccessData 3.x: (1) file name: "is the name Windows gives the entry using the DOS 8.3 naming convention;" (2) item number: "which is produced by ADI ah and referenced in the forensic report;" (3) acquisition MD5 and SHA1 hashes: "is a 128-bit value for a file entry generated by a hash analysis process" using either the "MD5" or "SHA1" algorithm; (4) the created date and time: "typically reflects the date/time the file/folder was created at that location... [a] notable exception to this is the extraction of files/folders from a ZIP archive... [t]hose objects will carry the created date/time as they existed when the objects were placed in the archive[.]" (5) accessed date and time: "displays the last accessed date/time - this typically reflects the last time the operating system or any compliant application touched the file (such as viewing, dragging, or right-clicking[.])" (6) modified date and time: "this typically reflects the last time the operating system or any compliant application altered the file;" (7) "P-Size" for physical size: "specifies the size of the storage areas allocated to the file[.]" (8) "L-Size" for logical size: "specifies the file size as the operating system addresses the file[.]" (9) file type: "identifies the type of file; after a Signature Analysis is run, this data is generated from the results[.]" and (10) the entire native file path: "identifies the location the file is located within the evidence file, including the evidence file name and a volume identifier[.]"

[REDACTED]

CONCLUSION

(U) The United States respectfully requests this Court: (1) consider this motion and the enclosures *in camera* and *ex parte* under Military Rule of Evidence (MRE) 505(g)(2); (2) affirmatively authorize redactions and deletions of classified information from evidence made available to the defense; and (3) issue an additional protective order, under MRE 505(g)(1), precluding the defense and their forensic expert from accessing irrelevant "deleted" classified information on the digital media made available to the defense.



ASHDEN FEIN
MAJ, JA
Trial Counsel

16 Enclosures

[REDACTED]

9. (U) Discovery Letter, 3 August 2012 [classified] [REDACTED]

[REDACTED]

13. (U) Excerpt from EnCase User Manual

14. (U) Email to Defense, dated 6 August 2012 with FEDEX delivery confirmation and Department of the Army Form 200

[REDACTED]

16. (U) Proposed Protective Order [classified] [REDACTED]

[REDACTED]

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES

v.

MANNING, Bradley E., PFC
U.S. Army, [REDACTED]
Headquarters and Headquarters Company, U.S.
Army Garrison, Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211

)
)
) **RULING CLARIFICATION:**
) **LESSER INCLUDED**
) **OFFENSE MAXIMUM**
) **PUNISHMENTS**

) DATED: 26 October 2012
)

On 19 July 2012 the Court issued a ruling regarding the maximum punishment for specification 1 of Charge II, and for the lesser included offense theories under clause 1 and 2 of Article 134 for the offenses charged under all 3 clauses of Article 134 (18 U.S.C. Section 641, 18 U.S.C. Section 793(e) and 18 U.S.C. 1030(a)(1)). The maximum punishments in that ruling assumed that the lesser included offenses under clauses 1 and 2 would include all of the elements charged except the clause 3 statute, where applicable. In the litigation culminating in the 19 July 2012 ruling, the Court was not requested to and did not consider the maximum punishment for any clause 1 or 2 offense or guilty plea involving a residuum of the elements charged.

On 15 October 2012, the Defense filed a Notice of Plea, Forum, and Expected Motions. On 23 October 2012, the Defense emailed the Court a Defense Revised Notice of Plea and Forum that is different from the 15 October 2012 submission in that it proffers pleas involving a residuum of elements. On 23 October 2012, via email, the Court ordered the Defense to provide a specification by specification breakdown of the maximum punishment by specification based on the proposed defense plea. On 25 October 2012, the Defense emailed the Court the Defense Calculation of Maximum Punishment with the calculations reached relying on the Court's 19 July 2012 order. This reliance was misplaced as the 19 July 2012 order does not address clause 1 and 2 lesser included offenses with a residuum of elements as contemplated by the accused's proffered pleas.

On 18 October 2012, the Court in consultation with the parties, established the following suspense dates for filings regarding the accused's proffered pleas and maximum punishments based on the accused's proffered pleas: 5 November 2012 filing; 16 November 2012 response; 23 November 2012 reply. Any litigation involving the accused's proffered pleas is scheduled to be addressed during the Article 39(a) session 27 November 2012 – 2 December 2012.

ORDERED: The parties will address the following issues in their filings regarding the accused's proffered plea specification by specification:

1. Is the proffered plea a lesser included offense of the charged offense or does it contain amendments to the specification requiring Convening Authority approval to be a referred offense? *U.S. v. Morton*, 69 M.J. 12 (C.A.A.F. 2010).
2. Assuming the Court accepts the proffered plea as a lesser included offense of the Charged offense or the Convening Authority approves amendment of the specification, what is the maximum punishment for each specification in accordance with the accused's proffered plea IAW RCM 1003(c)(1)(B) and *United States v. Beaty*, 70 M.J. 39 (C.A.A.F. 2011).

APPELLATE EXHIBIT 366
PAGE REFERENCED: _____
PAGE _____ OF _____ PAGES

So ORDERED this 26th day of October 2012.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

Appellate Exhibit 367

17 pages

classified

"SECRET"

ordered sealed for Reason 2

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

Appellate Exhibit 368

10 pages

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
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Record of Trial

Appellate Exhibit 368

Enclosure 1

9 pages

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 2

4 pages

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
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Record of Trial

Appellate Exhibit 368

Enclosure 3

27 pages

classified

"SECRET"

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and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

Appellate Exhibit 368

Enclosure 4

17 pages

classified

"SECRET"

ordered sealed for Reason 2

and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

Appellate Exhibit 368

Enclosure 5

1 CD

classified

"SECRET"

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and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 6

7 pages

classified

"CONFIDENTIAL"

ordered sealed for Reason 3
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 7

27 pages

classified

"SECRET"

ordered sealed for Reason 2

and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

Appellate Exhibit 368

Enclosure 8

17 pages

classified

"SECRET"

ordered sealed for Reason 2

and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

Appellate Exhibit 368

Enclosure 9

3 pages

classified

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Military Judge's Seal Order
dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 10

4 pages

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Military Judge's Seal Order

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Record of Trial

Appellate Exhibit 368

Enclosure 11

1 CD

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order
dated 20 August 2013

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supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 12

21 pages

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ordered sealed for Reason 2

and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified

supplement to the original

Record of Trial

UNCLASSIFIED

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

) Government *in camera* Motion to
) Redact or Delete Classified Information
) from Evidence Made Available
) to the Accused under MRE 505(g)(2)
) and for an Additional Protective Order
) for Classified Information
) under MRE 505(g)(1)

) 26 October 2012
) Enclosure 13

UNCLASSIFIED

APPELLATE EXHIBIT 1-2
PAGE REFERENCED:
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10-15

Guidance Software, Inc.
215 N. Marengo Ave., Second Floor
Pasadena, CA 91101

Tel: (626) 229-9119

Fax: (626) 229-9199

email: training@GuidanceSoftware.com
web: www.GuidanceSoftware.com



EnCase® **Computer Forensics I**

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Table Pane

By default the Table Pane is in the Table view. Within this view are the subfolders and files that are contained within the folder(s) that are highlighted or included (Set Include Option) in the Tree Pane. Highlighting or including (Set Include Option) a folder affects the display in the Table Pane as previously explained.

The *highlighting* and Set Include Option features are intended to view desired files and folders in the Table Pane. If there are one or more folders designated with the *include* feature, the highlighting feature will not change the number of files/folders displayed in the Table Pane.

This differs from the **Select** box located to the right of the pointed box. This is intended to *select* with a **blue check** the files and folders on which to perform certain operations, including but not limited to searching, signature analysis, copying, exporting. With the Set Include Option feature activated, the select operation will not alter the number of files/folders displayed in the Table Pane.

The Table view in the Table Pane displays many columns of information about the displayed entries.

- **Name** identifies the file/folder/volume, etc., in the evidence file
- **Filter** specifies the name of the filter run to display this entry
- **In Report** indicates whether or not the item will appear in the Report view
- **File Ext** displays the entry's extension, which initially determines whether this entry is displayed in the Gallery view
- **File Type** identifies the type of file; after a Signature Analysis is run, this data is generated from the results
- **File Category** indicates the category of the file from the **File Type** table
- **Signature** displays the results of a file signature analysis
- **Description** describes the *condition* of the entry – whether it is a file or folder, deleted, or deleted/overwritten
- **Is Deleted** displays “Yes” if the entry is in a deleted state; “No” if it is not

NOTE: The display depends on how the Show True/False options were set in the Tools→Options→Global menu.

- **Last Accessed** displays the last accessed date/time – this typically reflects the last time the operating system or any compliant application touched the file (such as viewing, dragging, or right-clicking). Entries on FAT volumes do not have a last accessed time.
- **File Created** typically reflects the date/time the file/folder was created *at that location*. A notable exception to this is the extraction of files/folders from a ZIP archive. Those objects will carry the created date/time as they existed when the objects were placed in the archive.
- **Last Written** reflects the date/time the file was last opened, edited, and then saved
- **Entry Modified** indicates for NTFS and Linux when the administrative data for the file was last altered

- **File Deleted** displays the deleted date/time if the file is documented in the Recycle Bin Info2 file
- **File Acquired** identifies the date/time the evidence file in which this entry resides was acquired
- **Logical Size** specifies the file size as the operating system addresses the file
- **Physical Size** specifies the size of the storage areas allocated to the file
- **Starting Extent** identifies the starting cluster of the entry
- **File Extents** displays the cluster fragments allocated to the file. Click within this column for an entry, and then click on the Details tab in the View Pane to see the cluster fragments.
- **Permissions** shows security settings of a file or folder
- **References** lists the number of times the selected entry is bookmarked
- **Physical Location** is the number of bytes into the device at which the data for an entry begins
- **Physical Sector** lists the sector number into the device at which the data for an entry begins
- **Evidence File** is where the entry resides
- **File Identifier** is an index number for a Master File Table (NTFS) or an Inode Table (Linux/Unix)
- **Hash Value** is a 128-bit value for a file entry generated by a hash analysis process
- **Hash Set** displays the hash set to which a file belongs generated by including hash sets in a hash library in a hash analysis process
- **Hash Category** displays the hash category to which a file belongs generated by including hash sets in a hash library in a hash analysis process
- **Full Path** identifies the location the file is located within the evidence file, including the evidence file name and a volume identifier
- **Short Name** is the name Windows gives the entry using the DOS 8.3 naming convention
- **Unique Name** is used to display the name for files mounted with the EnCase® Virtual File System (VFS) module in Windows Explorer
- **Original Path** displays information derived from data in the Recycle Bin. For files within the Recycle Bin, this column shows where they originated when they were deleted, and for deleted/overwritten files, this column shows the file that has overwritten the original.
- **Symbolic Link** is data pertaining to the equivalent of a Windows Shortcut in Linux and Unix
- **Is Internal** indicates whether the file is an internal system file such as the SMFT on an NTFS volume.
- **Is Overwritten** indicates if the entry has been overwritten by a subsequent object

UNCLASSIFIED

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

) Government *in camera* Motion to
) Redact or Delete Classified Information
) from Evidence Made Available
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) and for an Additional Protective Order
) for Classified Information
) under MRE 505(g)(1)

26 October 2012

Enclosure 14

UNCLASSIFIED

APPELLATE EXHIBIT 6-14 UNCL14
PAGE REFERENCED: _____
PAGE _____ OF _____ PAGES

Ford, Arthur D Jr CW2 USARMY (US)

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Monday, August 06, 2012 6:24 PM
To: David Coombs
Cc: Hurley, Thomas F MAJ OSD OMC Defense; Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Production and Discovery Update

David,

This email serves as an update and recap of the productions from the last week, including today, and outstanding discovery requests the United States is tracking.

1. Classified Productions.

a. Tracking #: 7986 8499 9626 (delivered on 2 Aug) containing: NGA documents (13 Documents, BATES #: 00449582 - 00449764); DoD and Joint Staff documents (4512 Documents, BATES #: 00449943 - 00471793); HQDA documents (1318 Documents, BATES #: 00471794 - 00479054); DIA documents (4825 Documents, BATES #: 00479055 - 00504418); ATF document (1 Document, BATES #: 00504419 - 00504420).

b. Tracking #: 7938 6252 6592 (delivered on 3 Aug) containing: DIA documents (53 Documents, BATES #: 00504653 - 00505060) and other classified documents, including assessments by DTRA, USITC, DEA, and PIAB, and various CID documents (BATES #: 00505061 - 00505183).

c. Tracking #: 7938 6938 4403 (delivery scheduled for 7 August 2012) containing: (1) Disk 1- damage documents (BATES #: 00505205 - 00505256); other law enforcement documents including enemy information and documents relating to one dataset (BATES #: 00505258 - 00505322); (2) Disk 2- other documents related to another dataset along with an attestation certificate (BATES #: 00505323 - 00505808); (3) Disk 3- "Info Extracted from the FBI Disk" (explained below); and (4) Disks 4 through 7 containing the classified enclosures to the Government Motion to PreAdmit 2.

d. On Friday, 3 August 2012, CPT Morrow sent via SIPR a classified memorandum to all three defense security experts (Hall, Ganiel, and Robillard), but addressed to you, titled "Discovery Production". The purpose of this memorandum is to notify the defense that certain forensic evidence is available for the defense and your forensic computer experts to view, but on an identified computer. The memorandum explains what the evidence is and how it will be made available. The underlying forensic evidence is for the four documents found at BATES #: 00505208-0050529. Additionally, these four documents reference two files that were also extracted and produced on a separate classified CD labeled "Info Extracted from the FBI Disk" (referenced above).

2. Unclassified Productions.

a. Tracking #: 7986 8527 6520 (delivered on 2 August 2012) containing: Various documents, including confinement recordings and logs, IA and ATRRS training records, 201 file pages that were not previously produced with BATES numbers but were included in the court filings, and Int3link log attestation (BATES #: 00504421 - 00504481).

UNCLASSIFIED

- b. Tracking #: 7938 6321 2778 (delivered 3 August 2012) containing: Miscellaneous documents and attestation certificate, including prior classification declaration and CID memos (BATES #: 00505184 - 00505204).
- c. Tracking #: 7938 6660 9289 (delivered 6 August 2012) containing the Int3!ink log attestation re-produced with an updated BATES number and an MFR explaining the re-numbering (BATES #: 00505257 - 00505257).
3. NSA Document Review. Per CPT Morrow's email at 1129 on 3 August 2012, please coordinate with Mr. Erik Dodson to inspect the NSA document.
4. Gap in Production Numbers. We are going through the damage assessment/impact reviews which we provided for defense inspection and applying BATES #s. As of now, only the DIA (BATES #: 00504532-00504652) and DoS (BATES #: 00504482-00504531) documents have been given BATES #s and we will manually BATES # the specially controlled documents and provide during the next session.
5. Delivery to MAJ Hurley. We attempted to deliver the classified material to MAJ Hurley on both 3 August 2012 and 6 August 2012, but he is not in the office. When he returns, we will coordinate delivery. We will continue to send the information to NWC.
6. Discovery Request, dated 9 July 2012. The prosecution is working with Quantico to search for the requested video. Thus far, Quantico has been unsuccessful in its search. We will let you know if the video is found or when we exhaust all available resources. The prosecution intends to respond to your request by the end of the week, but as of now we have been told that the memory card was reallocated and cannot be found.
7. Discovery Request, dated 1 August 2012. Understanding the urgency on this request, we are currently working with Quantico MCB to determine what information still exists and is available, especially considering most leaders have departed this summer. Once we ascertain this information, we will then be able to quickly reply and expect to reply by the end of the week. We will provide the defense with an update on Wednesday afternoon.
8. Article 13 Redactions. The only information that CPT von Elten identified that should be redacted is information pursuant to the Court's order pertaining to individuals' names and their duty positions, in order to protect their identify (not parties to the litigation). His list should help you identify the places that we found while reading the pleading, but we did not scrub the list to ensure that you complied with the Court's order.
9. Discovery Production. The prosecution is working to locate and produce the smock, mattress, and blanket, per the Court's order.
10. Unclassified Damage Assessments. The prosecution continues to coordinate with those organizations that provided a classified damage assessment. A majority of those organizations have denied the defense's request, while others are vetting the request throughout the organization to provide the prosecution an answer to the defense's request. Should any organization provide an unclassified version of their document, the prosecution will disclose that material as soon as possible.
11. Speedy Trial Witness List. The prosecution will provide you with a response regarding the filing date for the defense's Speedy Trial Witness List tomorrow.

Thank you!

v/r
Ashden

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August 7, 2012

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R.WEGIEL

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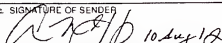
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3 TITLE/FILE IDENTIFICATION See BLOCK 18 for description of CDs		4. AS OF DATE (YYYYMMDD)	5 SHIPMENT DATE (YYYYMMDD) 2012/08/10
6 AUTHORITY FOR SHIPMENT		7 NUMBER OF RECORDS TRANSMITTED 12 CDs	
8 PERSON TO CONTACT (Name and telephone) CW2 Arthur Ford (202) 685-1975		9 REQUIREMENT CONTROL SYMBOL (AR 335.15)	
10 SHIPPED FROM 1 S Army Military District of Washington Office of the Staff Judge Advocate 163 3rd Avenue Bldg 32, Suite 100 Fort Lesley J. McNair, DC 20319		11 SHIPPED TO MAJ Thomas Hurley Office of the Military Commissions Defense 1555 Wilson Boulevard, Suite 620 Arlington, VA 22209 (703) 696-9490, EXT 117 <input checked="" type="checkbox"/> RETURN RECEIPT REQUESTED (When box is checked, sign below and return copy to sender)	
10a TYPED NAME AND TITLE OF SENDER SGT Amber McLamb		11a TYPED NAME AND TITLE OF RECEIVER MAJ Thomas Hurley	
10b SIGNATURE OF SENDER 		11b SIGNATURE OF RECEIVER AND DATE Thomas J. Hurley 10 Aug 12	
12 TYPE OF MEDIA TRANSMITTED			
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13 NUMBER OF BOXES (Packages)		14 NUMBER OF ITEMS 12 CDs	
15 METHOD OF SHIPMENT			
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16 SPECIAL INSTRUCTIONS			
17 TYPE COMPONENT USED (For magnetically recorded data)			
18 REMARKS			
Disk 1 (0050525-00505257		Disk 8 (OSC User Information Files (banning)) (OSC User Information Files (banning))	
Disk 2 (00505184-00505204		Disk 9 (C) (OSC Logs (banning & bradavet87))	
Disk 3 (S) (00504653-00505183		Disk 10 (S) Intelink 22 & 40 Logs	
Disk 4 (S) Info Extracted from FBI Disk		Disk 11 (S) Intelink Passport Account Information	
Disk 5 (S) (00505205-00505256 (S) (00505258-00505322		Disk 12 (S) manning_00505809	
Disk 6 (S) (00505323-00505808			
Disk 7 (S) (00449583-00449764 (S) (00449943 (00504429			

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Appellate Exhibit 368

Enclosure 15

10 pages

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Military Judge's Seal Order

dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

Appellate Exhibit 368

Enclosure 16

1 page

classified

"SECRET"

ordered sealed for Reason 2
and Reason 7 (government)

Military Judge's Seal Order

dated 20 August 2013

stored in the classified
supplement to the original
Record of Trial

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

SPEEDY TRIAL CHRONOLOGY

MANNING, Bradley E., PFC)

U.S. Army,)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

DATED: 26 October 2012

Pursuant to Rule 3.2, Rules of Practice before Army Courts-Martial 2012, the Defense stipulates to the below chronology of dates and events for the above-captioned court-martial.

Date	Event
27-May-10	PFC Manning confined in CHU with armed guard
29-May-10	PFC Manning ordered into pretrial confinement
30-May-10	Military Magistrate approved pretrial confinement
31-May-10	PFC Manning transferred to Theater Field Confinement Facility in Kuwait
5-Jul-10	Original Charges preferred
6-Jul-10	SPCMCA appointed LTC Craig Merutka as the Article 32 Investigating Officer
11-Jul-10	Article 32 Investigating Officer denied defense's request for an RCM 706 board
11-Jul-10	Defense request RCM 706 board and delay of Article 32 investigation
12-Jul-10	Defense requested delay of Article 32 investigation until RCM 706 board completed and until the PFC Manning could resolve issues relating to civilian defense counsel and defense expert witnesses
12-Jul-10	SPCMCA granted defense request to delay Article 32 investigation
13-Jul-10	Defense requested for appointment of expert in computer forensics
23-Jul-10	SPCMCA granted defense request for expert in computer forensics
28-Jul-10	GCMCA requested transfer of jurisdiction to MDW
28-Jul-10	GCMCA signed Protective Order Governing Classified Information
29-Jul-10	PFC Manning arrived at Quantico
2-Aug-10	GCMCA released jurisdiction to SPCMCA
2-Aug-10	SPCMCA ordered Article 32 investigation to be completed within 10 days
3-Aug-10	SPCMCA ordered RCM 706 board

4-Aug-10	Appointment of LTC Paul Almanza as the Article 32 Investigating Officer
11-Aug-10	Defense requested delay of Article 32 investigation until completion of RCM 706 board
12-Aug-10	Article 32 Investigating Officer recommended that SPCMCA approve the defense delay request for completion of RCM 706 board
12-Aug-10	SPCMCA approved defense request for delay of Article 32 investigation states "period from 11 August 2010 until the R.C.M. 706 Sanity Board completion is excludable defense delay."
25-Aug-10	Defense requested delay of RCM 706 board until forensic psychiatry expert appointed to defense team
25-Aug-10	SPCMCA excludes the period between 27 August 2010 and until the CGMCA takes action of the defense request for appointment of a forensic psychiatry expert consultant is excludable delay under R.C.M. 707(c).
26-Aug-10	Defense request for delay in R.C.M. 706 board to comply with prohibitions on disclosure of classified information.
3-Sep-10	Defense requested security clearance for each defense member, to include experts
17-Sep-10	SPCMCA appointed defense security expert consultant and security officer for RCM 706 board
17-Sep-10	SPCMCA issued Protective Order Governing Classified Information
17-Sep-10	SPCMCA ordered Preliminary Classification Review of PFC Manning's Mental Impressions (PCR)
18-Sep-10	Defense Response to the Preliminary Classification Review of Accused's Mental Impressions.
22-Sep-10	Superseding Order for Preliminary Classification Review of Accused's Mental Impressions.
28-Sep-10	Defense requested second defense security expert to assist PCR, for PCR to take place in SCIF, and for the PFC Manning to be given access to classified information
12-Oct-10	SPCMCA appointed expert consultant in forensic psychiatry for defense
12-Oct-10	SPCMCA appointed second defense security expert to assist with PCR
12-Oct-10	SPCMCA excludes the period from 12 July 2010 until 12 October 2010 as excludable delay under R.C.M. 707(c).
22-Oct-10	Discovery Production Bates # 00000001 - 00000429 (429 pages), including Preferral Packet [Unclassified]
28-Oct-10	Defense requested appointment of expert in information assurance to the defense team
29-Oct-10	Defense submitted a discovery request
10-Nov-10	Discovery Production Bates # 00000430 - 00000450 (21 pages), including Initial Article 32 Packet [Unclassified]
10-Nov-10	SPCMCA excludes the period from 12 October 2010 until 10 November as excludable delay under R.C.M. 707(c).

11-Nov-10	Discovery Production Bates # 00000451 - 00000474 (24 pages), including Initial Article 32 Packet [Unclassified]
15-Nov-10	Defense submitted a discovery request
19-Nov-10	Discovery Production Bates # 00000475 - 00000662 (188 pages), including Initial Article 32 Packet [Unclassified]
29-Nov-10	Defense requested appointment of investigator for defense
8-Dec-10	Defense submitted a discovery request
13-Dec-10	Results of Preliminary Classification Review provided to the Government.
17-Dec-10	SPCMCA denied defense request for appointment of investigator for defense
17-Dec-10	SPCMCA excludes the period from 10 November 2010 until 17 December 2010 as excludable delay under R.C.M. 707(c).
18-Dec-10	Defense requested the names of those members on the RCM 706 board
30-Dec-10	Defense submitted MRE 505(h) motion for RCM 706 board
3-Jan-11	Discovery Production Bates # 00000663 - 00000771 (109 pages), including Preliminary Inquiry [Unclassified]
5-Jan-11	Defense submitted memorandum requesting change of the PFC Manning's classification and assignment
5-Jan-11	Prosecution responded to defense notification under MRE 505(h)
10-Jan-11	Defense submitted a discovery request
13-Jan-11	Defense requested speedy trial and submits an RCM 305(g) request to SPCMCA
14-Jan-11	Discovery Production Bates # 00000772 - 00000851 (80 pages), including 15-6 Investigation [Unclassified]
14-Jan-11	SPCMCA appointed expert in information awareness for defense
14-Jan-11	SPCMCA approved defense request for expert in forensic psychiatry
14-Jan-11	SPCMCA excludes the period from 17 December 2010 until 14 January 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
19-Jan-11	Defense Submits s discovery request
21-Jan-11	SPCMCA denied defense RCM 305(g) request
3-Feb-11	SPCMCA ordered RCM 706 to resume
9-Feb-11	Discovery Production Bates # 00000852 - 00001049 (198 pages), including Medical Records [Unclassified]
9-Feb-11	Discovery Production Bates # 00001050 - 00001051 (2 pages), including Certificate of Service - to Liberty TDS [Unclassified]
15-Feb-11	SPCMCA excludes the period from 14 January 2011 until 15 February 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
16-Feb-11	Defense submitted a discovery request
17-Feb-11	Defense submitted motion to compel discovery

18-Feb-11	Defense requested for appointment of neuropsychologist for defense
25-Feb-11	Prosecution submitted response to defense's motion to compel discovery to the Article 32 investigating officer
1-Mar-11	Additional charges preferred
8-Mar-11	Discovery Production Bates # 00001052 - 00011448 (10397 pages), including 35F TRN POI and Quantico Art 138 Response [Unclassified]
14-Mar-11	RCM 706 board submitted extension request
18-Mar-11	Original charges dismissed
18-Mar-11	SPCMCA approves of the R.C.M. 706 Board Extension Request and directs the Board to complete its work by 16 April 2011.
18-Mar-11	SPCMCA excludes the period from 15 February 2011 until 18 March 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
5-Apr-11	SPCMCA appointed neuropsychologist for defense
5-Apr-11	SPCMCA denied defense request for mitigation expert
7-Apr-11	Discovery Production Bates # 00011449 - 00011462 (14 pages), including Art 138 Response [Unclassified]
9-Apr-11	Discovery Production Bates # 00011463 - 00011573 (111 pages), including Art 138 Response [Unclassified]
9-Apr-11	RCM 706 board interviewed PFC Manning
12-Apr-11	Discovery Production Bates # 00011574 - 00012711 (1138 pages), including Security Classification Guide, OMPF, Enemy Information [Unclassified]
12-Apr-11	Prosecution responded to defense discovery request dated 10 January 2011 and 16 February 2011
15-Apr-11	RCM 706 board submitted additional extension request
15-Apr-11	SPCMCA approved RCM 706 board extension request
18-Apr-11	Discovery Production Bates # 00012712 - 00012720 (9 pages), including Art 138 Response [Unclassified]
20-Apr-11	PFC Manning transferred from Quantico to the Joint Regional Correctional Facility at Fort Leavenworth, Kansas.
20-Apr-11	Defense requested expert neuropsychologist for Fort Leavenworth
22-Apr-11	The RCM 706 board submits its report
22-Apr-11	SPCMCA excludes the period from 18 March 2011 until 22 April 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
25-Apr-11	Prosecution requested delay of Article 32 investigation until the earlier of the completion of the OCA Disclosure Requests and OCA Classification Reviews or 25 May 2011.
26-Apr-11	Defense opposition to the Government's excludable delay request and a request for the Convening Authority to direct either substitutions or summaries be provided to the Defense to avoid any delay in the Article 32.
29-Apr-11	SPCMCA approved prosecution's request for a delay of Article 32

	investigation
4-May-11	SPCMCA approved defense's request for expert in neuropsychology
12-May-11	Discovery Production Bates # 00012721 - 00012924 (204 pages), including Art 138 Response [Unclassified]
12-May-11	SPCMCA excludes the period from 22 April 2011 until 12 May 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
13-May-11	Defense submitted a discovery request
22-May-11	Prosecution submitted its second request to delay Article 32 investigation.
24-May-11	Defense objected to prosecution's request to delay Article 32 investigation
26-May-11	SPCMCA approved prosecution's request for a delay of Article 32 investigation
9-Jun-11	Discovery Production Bates # 00012925 - 00012933 (9 pages), including Art 138 Response [Unclassified]
17-Jun-11	SPCMCA excludes the period from 12 May 2011 until 17 June 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
22-Jun-11	SPCMCA approved facility and storage of classified information
22-Jun-11	SPCMCA issued Protective Order governing law enforcement sensitive information and other sensitive information
22-Jun-11	SPCMCA issued Protective Order governing Secretary of the Army AR 15-6 investigation
27-Jun-11	Prosecution requested third delay of Article 32 investigation
29-Jun-11	Defense objected to prosecution's request to delay Article 32 investigation
30-Jun-11	Discovery Production Bates # 00012934 - 00021363 (8430 pages), Sec Army 15-6 [Unclassified]
5-Jul-11	SPCMCA approved prosecution's request to delay Article 32 investigation
13-Jul-11	SPCMCA excludes the period from 17 June 2011 until 13 July 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial.
25-Jul-11	Prosecution requested fourth delay of Article 32 investigation
25-Jul-11	Defense objected to prosecution's request for delay of Article 32 investigation and requests speedy trial
25-Jul-11	Discovery Production Bates # 00021364 - 00024382 (3019 pages), including CID information [Unclassified]
25-Jul-11	Discovery Production Bates # 00036618 - 00036802 (185 pages), including CID information [Unclassified]
26-Jul-11	SPCMCA approved prosecution's request for a delay of Article 32 investigation
2-Aug-11	Discovery Production Bates # 00036803 - 00036803 (1 pages), including CID information [Unclassified]

9-Aug-11	Defense requested forensic computer expert
9-Aug-11	Discovery Production Bates # 00036804 - 00042806 (6003 pages), including Sec Army 15-6 GOMORs [Unclassified]
10-Aug-11	SPCMCA appointed defense expert in forensic psychiatry
10-Aug-11	SPCMCA appointed defense forensic computer experts and request for computer hardware
10-Aug-11	SPCMCA excludes the period from 13 July 2011 until 10 August 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial dated 13 January 2011 and the Defense's renewed request for Speedy Trial dated 25 July 2011.
11-Aug-11	Discovery Production Bates # 00042807 - 00044864 (2058 pages), including Pretrial Confinement Documents [Unclassified]
25-Aug-11	Prosecution requested fifth delay of Article 32 investigation
27-Aug-11	Defense objected to prosecution's request to delay Article 32 investigation
29-Aug-11	SPCMCA approved prosecution's request for delay of Article 32 investigation
1-Sep-11	Discovery Production Bates # 00044865 - 00045301 (437 pages), including Military Intelligence Investigations [Classified and Unclassified]
15-Sep-11	SPCMCA excludes the period from 10 August 2011 to 15 September 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial dated 13 January 2011 and the Defense's renewed request for Speedy Trial dated 25 July 2011.
19-Sep-11	Discovery Production Bates # 00024383 - 00024459 (77 pages), including Deleted Information [Unclassified]
21-Sep-11	Defense submitted a discovery request
26-Sep-11	Prosecution sixth requested delay of Article 32 investigation
27-Sep-11	Defense objected to prosecution's request for delay of Article 32 investigation
28-Sep-11	SPCMCA approved prosecution's request for delay of Article 32 investigation
3-Oct-11	Discovery Production Bates # 00024460 - 00036617 (12158 pages), including CID information [Unclassified]
12-Oct-11	Discovery Production Bates # 00045302 - 00045581 (280 pages), including CID information [Unclassified]
13-Oct-11	Defense submitted a discovery request
14-Oct-11	SPCMCA excludes the period from 15 September 2011 to 14 October 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial dated 13 January 2011 and the Defense's renewed request for Speedy Trial dated 25 July 2011.

20-Oct-11	Discovery Production Bates # 00045582 - 00046073 (492 pages), including CID information [Unclassified]
25-Oct-11	Prosecution seventh requested delay of Article 32 investigation
25-Oct-11	Defense objected to prosecution's request for a delay of Article 32 investigation
27-Oct-11	SPCMCA approved prosecution's request to delay Article 32 investigation
4-Nov-11	Discovery Production Bates # 00046074 - 00375129 (329056 pages), including CID Forensic Reports [Unclassified]
8-Nov-11	Discovery Production Bates # 00375130 - 00375182 (53 pages), including Military Intelligence Investigation [Unclassified]
8-Nov-11	Discovery Production Bates # 00376954 - 00378175 (1222 pages), including Charged Documents, C3 Report, Classification Review [Classified]
8-Nov-11	Discovery Production Bates # 00378176 - 00378176 (1 pages), including Volumes.txt [Unclassified]
8-Nov-11	Discovery Production Bates # 00378177 - 00378624 (448 pages), including Military Intelligence Investigation and Classified CID information [Classified and Unclassified]
15-Nov-11	Defense submitted a discovery request
16-Nov-11	Defense objected to prosecution's request for delay of Article 32 investigation
16-Nov-11	Defense submitted a discovery request
16-Nov-11	Trial Counsel requests the Convening Authority to exclude the period between 16 November 2011 and 16 December 2011 as excludable delay under R.C.M. 707(c) in order for the Government to obtain the final classification review from an OCA and to provide the command with time to execute OPLAN BRAVO.
16-Nov-11	Defense objects to the Government proposed start date and proposing an earlier date of 12 December 2011. The Defense also objects to any delay being excluded under R.C.M. 707(c) and instead requested the time be counted against the Government for Speedy Trial and Article 10 purposes.
16-Nov-11	SPCMCA approves the Government's request for delay and excludes the period from 22 April 2011 until 16 December 2011 as excludable delay under R.C.M. 707(c).
16-Nov-11	SPCMCA issued special instructions to the Article 32 investigating officer
17-Nov-11	Discovery Production Bates # 00378626 - 00378649 (24 pages), including CID information and classification review(s) [Classified and Unclassified]
17-Nov-11	Discovery Production Bates # 00378650 - 00384256 (5607 pages), including Sec Army 15-6 GOMORs [Unclassified]
23-Nov-11	Discovery Production Bates # 00378625 - 00378625 (1 pages), including DA Form 4137 [Classified]

23-Nov-11	Discovery Production Bates # 00402272 - 00407990 (5719 pages), including Sec Army 15-6 GOMORs [Unclassified]
23-Nov-11	Discovery Production Bates # 00407991 - 00409678 (1688 pages), including CID information and DSS case file [Unclassified]
1-Dec-11	Discovery Production Bates # 00384257 - 00402271 (18015 pages), including Sec Army 15-6 GOMORs [Unclassified]
7-Dec-11	Discovery Production Bates # 00375183 - 00375197 (15 pages), including Sec Army 15-6 GOMORs [Unclassified]
7-Dec-11	Discovery Production Bates # 00410600 - 00410670 (71 pages), including Enemy information, PFC Manning's office work product, and classification review(s) [Classified]
9-Dec-11	Discovery Production Bates # 00375198 - 00376953 (1756 pages), including CID information, Schmiedl Files, Classification Reviews [Unclassified]
9-Dec-11	Discovery Production Bates # 00410671 - 00410689 (19 pages), including CID information [Unclassified]
16-Dec-11	Article 32 investigation began
19-Dec-11	Discovery Production Bates # 00410690 - 00410697 (8 pages), including CID information and pretrial confinement information [Unclassified]
19-Dec-11	Discovery Production Bates # 00410698 - 00410701 (4 pages), including Classification review [Classified and Unclassified]
22-Dec-11	Article 32 investigation concluded
3-Jan-12	Prosecution requested Article 32 Investigating Officer exclude as reasonable delay anytime between 22 December 2011 and 3 January 2012 that he did not work on the Article 32 investigation based on the federal holidays and weekends
3-Jan-12	SPCMCA excludes the period from 16 November 2011 until 15 December 2011 as excludable delay under R.C.M. 707(c). The Convening Authority acknowledged the Defense's request for Speedy Trial dated 13 January 2011 and the Defense's renewed request for Speedy Trial dated 25 July 2011
4-Jan-12	Article 32 investigating officer sent an email excluding as a reasonable delay the days between 23 December 2011 and 3 January 2012 when he did not work on the Article 32 investigation
11-Jan-12	Article 32 investigating officer completed his report and recommendations, including providing the SPCMCA with an excludable delay memorandum
12-Jan-12	Discovery Production Bates # 00410702 - 00410788 (87 pages), including Article 32 investigating officer's final report and pretrial confinement recordings [Unclassified]
20-Jan-12	Defense submitted a discovery request
20-Jan-12	Discovery Production Bates # 00410789 - 00410870 (82 pages), including CID information and PFC Manning's Skype logs [Unclassified]

27-Jan-12	Discovery Production Bates # 00410871 - 00411342 (472 pages), including CID Docs, Art 32 Audio - Unclassified [Unclassified]
27-Jan-12	Discovery Production Bates # 00411343 - 00411366 (24 pages), including Manning Computer Logs, Closed session - 111218 [Unclassified]
27-Jan-12	Prosecution responded to defense discovery request dated 29 October 2010, 15 November 2010, 8 December 2010, 10 January 2011, 16 February 2011, 13 May 2011, 13 October 2011, 15 November 2011, 16 November 2011, and 20 January 2012.
31-Jan-12	Defense submitted a discovery request
3-Feb-12	GCMCA refers the case
3-Feb-12	Court received Electronic Docket Notification
6-Feb-12	Defense requested coordination for transportation of PFC Manning to defense meeting
8-Feb-12	Telephonic RCM 802 session
16-Feb-12	Defense files its first Motion to Compel Discovery
23-Feb-12	Arraignment
13-Mar-12	Discovery Production Bates # 00411367 - 00412613 (1247 pages), including CID information/Attestations/PTC Visitation Logs, Audio Logs [Unclassified]
15-Mar-12	Article 39(a) session began
16-Mar-12	Article 39(a) session concluded
16-Mar-12	Discovery Production Bates # 00412614 - 00417914 (5301 pages), including FBI information [Unclassified]
22-Mar-12	Email sent by then-CPT Fein stating Government's position on R.C.M. 701 and classified evidence.
28-Mar-12	RCM 802 telephonic conference
12-Apr-12	Discovery Production Bates # 00417915 - 00419646 (1732 pages), including FBI information, PFC Manning AKO-S email, trial documents, DISA and JIEDDO information [Classified and Unclassified]
12-Apr-12	Discovery Production Bates # 00419647 - 00419804 (158 pages), including CID information, damage assessment(s), motions hearing audio [Unclassified]
24-Apr-12	Article 39(a) session began
24-Apr-12	Discovery Production Bates # 00419805 - 00445503 (25699 pages), including Interim CID Forensic Reports [Classified and Unclassified]
26-Apr-12	Article 39(a) session concluded
15-May-12	Discovery Production Bates # 00445504 - 00447091 (1588 pages), including FBI information [Classified]
15-May-12	Discovery Production Bates # 00447092 - 00447392 (301 pages), including Administrative documents, CID information, and damage assessment(s) [Unclassified]

15-May-12	Discovery Production Bates # 00447393 - 00447439 (47 pages), including Damage assessments [Classified]
18-May-12	Discovery Production Bates # 00447440 - 00447666 (227 pages), including FBI information [Classified and Unclassified]
18-May-12	DOS Draft Damage Assessment available for inspection with prosecution [Classified with Special Control Measures]
21-May-12	Discovery Production Bates # 00447667 - 00447817 (151 pages), including Grand jury information [Unclassified]
21-May-12	Discovery Production Bates # 00447818 - 00447848 (31 pages), including Damage assessments and CIA information [Classified]
24-May-12	Discovery Production Bates # 00447849 - 00447944 (96 pages), including Pretrial confinement recordings and photos, CID information, and trial documents [Classified]
29-May-12	Discovery Production Bates # 00447945 - 00449240 (1296 pages), including Trial documents [Classified]
30-May-12	RCM 802 telephonic conference
4-Jun-12	Discovery Production Bates # 00449241 - 00449242 (2 pages), including DOE damage assessment [Classified]
6-Jun-12	Article 39(a) session began
6-Jun-12	DIA Information Review Task Force Report available for inspection with prosecution [Classified with Special Control Measures]
8-Jun-12	Article 39(a) session concluded
13-Jun-12	Discovery Production Bates # 00449243 - 00449402 (160 pages), including DHS damage assessment [Classified]
25-Jun-12	Article 39(a) session
26-Jun-12	Defense submitted 15 th discovery request
2-Jul-12	Discovery Production Bates # 00508935 - 00508940 (6 pages), CIA WikiLeaks Task Force Report available for inspection with prosecution [Classified with Special Control Measures]
3-Jul-12	Discovery Production Bates # 00449403 - 00449464 (62 pages), including CID information, trial documents, and DISA logs [Unclassified]
3-Jul-12	Discovery Production Bates # 00449465 - 00449552 (88 pages), including CID report, damage assessment(s), and PFC Manning's emails [Classified]
3-Jul-12	Prosecution responded to defense's discovery request date 26 June 2012
12-Jul-12	Discovery Production Bates # 00449553 - 00449571 (19 pages), including Pretrial confinement recordings and CID forensic report [Unclassified]
12-Jul-12	Discovery Production Bates # 00449572 - 00449581 (10 pages), including DISA information [Classified]
16-Jul-12	Article 39(a) session began
20-Jul-12	Article 39(a) session concluded

27-Jul-12	Discovery Production Bates # 00449793 - 00449942 (150 pages), including Brig Emails [Unclassified]
27-Jul-12	RCM 802 telephonic conference
28-Jul-12	Discovery Production Bates # 00449582 - 00449764 (183 pages), including NGA information [Classified]
2-Aug-12	Discovery Production Bates # 00449765 - 00449792 (28 pages), including USCYBERCOM and FBI damage assessments [Classified]
2-Aug-12	Discovery Production Bates # 00449943 - 00479483 (29541 pages), including Joint Staff/DOD/HQDA/DIA information [Classified]
2-Aug-12	Discovery Production Bates # 00479484 - 00499594 [Classified]
2-Aug-12	Discovery Production Bates # 00499595 - 00504420 (4826 pages), including DIA information and other damage assessment(s) [Classified]
2-Aug-12	Discovery Production Bates # 00504421 - 00504481 (61 pages), including Pretrial confinement recordings and trial documents [Unclassified]
2-Aug-12	Discovery Production Bates # 00504482 - 00505060 (579 pages), including DIA information, DOS and DIA damage assessments marked [Classified]
3-Aug-12	Discovery Production Bates # 00505061 - 00505183 (123 pages), including Damage assessments and CID information [Classified]
3-Aug-12	Discovery Production Bates # 00505184 - 00505204 (21 pages), including CID information and various OCA documents [Unclassified]
3-Aug-12	Discovery Production Classified digital evidence [Classified with Special Control Measures]
3-Aug-12	Discovery Production NSA documents [Classified with Special Control Measures]
6-Aug-12	Discovery Production Bates # 00505205 - 00505256 (52 pages), including damage assessments and enemy information [Classified]
7-Aug-12	Discovery Production Bates # 00505257 - 00505257 (1 pages), including Intelink attestation [Unclassified]
7-Aug-12	Discovery Production Bates # 00505258 - 00505808 (551 pages), including FBI information and variation of charged documents [Classified]
10-Aug-12	Discovery Production Bates # 00505809 - 00506675 (867 pages), including DIA information [Classified]
14-Aug-12	Discovery Production Bates # 00506676 - 00506684 (9 pages), including Quantico information [Unclassified]
14-Aug-12	Discovery Production Bates # 00508691 - 00508934 (244 pages), including Quantico information [Unclassified]
16-Aug-12	Discovery Production Bates # 00506685 - 00508690 (2006 pages), including USCYBERCOM information [Classified]
16-Aug-12	Discovery Production Bates # 00509516 - 00511906 (2391 pages), including USCYBERCOM information available for inspection with prosecution [Classified with Special Control Measures]

21-Aug-12	Discovery Production Bates # 00508941 - 00509515 (575 pages), including DIA information [Classified]
23-Aug-12	Discovery Production NCIX information available for inspection at ODNI HQ [Classified with Special Control Measures]
27-Aug-12	Article 39(a) session began
27-Aug-12	Discovery Production Bates # 00511907 - 00514453 (2547 pages), including Quantico emails [Unclassified]
30-Aug-12	Article 39(a) session concluded
14-Sep-12	Discovery Production Bates # 00514501 - 00514898 (398 pages), DIA and ODNI information available for inspection with prosecution [Classified with Special Control Measures]
14-Sep-12	Discovery Production Bates # 00519353 - 00523672 (1286 pages), including DOS information [Classified]
14-Sep-12	Discovery Production DoS information [Classified with Special Control Measures]
15-Sep-12	Discovery Production Bates # 00514454 - 00514497 (44 pages), including DHS information [Unclassified]
15-Sep-12	Discovery Production Bates # 00514498 - 00514498 (1 pages), including DHS information [Classified]
19-Sep-12	Discovery Production Bates # 00514499 - 00514500 (2 pages), including DOE information [Unclassified]
19-Sep-12	Discovery Production Bates # 00514899 - 00515842 (944 pages), including DIA and CIA information [Classified]
19-Sep-12	Discovery Production Bates # 00515843 - 00519167 (3325 pages), including Quantico emails [Unclassified]
20-Sep-12	Discovery Production Bates # 00519168 - 00519352 (185 pages), including FBI information [Classified]
20-Sep-12	Discovery Production Bates # 00519353 - 00523672 (1286 pages), including DOS information [Classified], which was previously made available for inspection on 14 Sep 12
28-Sep-12	Discovery Production Bates # 00509516 - 00511906 (2391 pages), including USCYBERCOM previously made available for inspection on 16 Aug 12
28-Sep-12	Discovery Production Bates # 00514501 - 00514898 (398 pages), including DIA and ODNI information previously made available for inspection on 14 Sep 12


 DAVID EDWARD COOMBS
 Civilian Defense Counsel

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army, [REDACTED])

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE ORIGINAL
CLASSIFICATION AUTHORITY
INTERROGATORIES**

DATED: 26 October 2012

Pursuant to Rule for Courts-Martial (R.C.M.) 702(g)(2), the Defense submits the following questions to be asked of each of the relevant Original Classification Authorities (OCAs). The Defense requests that the responses by the relevant OCAs be provided to the Court and Defense no later than 16 November 2012.

Classification Review of Charged Documents

Prior Classification Reviews

What does a classification review entail?

How many classification reviews did your agency do in:

2010?

2011?

2012? (not including the classification review in this case)

How many documents were reviewed in each case?

How many people worked on each review?

When was each review begun? Completed?

How many man hours were spent on each review?

Communication Between OCA and Trial Counsel

Did you personally speak to any of the trial counsel in this case?

If yes, how many times?

If yes, when?

APPELLATE EXHIBIT 370
PAGE REFERENCED: _____
PAGE ____ OF ____ PAGES

Did you personally have any written communications with the trial counsel in this case?

If yes, how many times?

If yes, when? Please provide documentation.

Initial Communications

When did trial counsel in this case first approach you or your organization about a classification review in the case of *United States v. Manning*?

How did trial counsel first approach you? (e.g. email, phone, meeting)

What did the trial counsel ask you to do or tell you at this first encounter?

When did trial counsel first ask you to complete a classification review?

First Request for Classification Review

How did trial counsel first ask you to complete a classification review? If a written request, please provide documentation.

What did trial counsel ask you to do?

Concerning this first request, did trial counsel give you a suspense date for completing the classification review process?

If yes, what was that date?

If no,

Did you request a suspense date?

Did you provide an approximate time line on how long you thought the process would take?

Did trial counsel ask for an approximate time line on how long you thought the process would take?

Was there any discussion of timing? If yes, what did it entail?

Did the trial counsel mention the issue of speedy trial? If so, how?

What was the date on which you began the process of completing a classification review?

What were you told by trial counsel about the role of the classification review in the legal proceedings?

Did trial counsel ever tell you to take your time with the classification review because they were not ready to proceed with the Article 32?

Legal Counsel for OCA

Was legal counsel for your Agency involved in any aspect of the classification review process?

If so,

Explain how.

Did legal counsel ever mention the issue of timing or speedy trial?

Logistics of Classification Review For Charged Documents

How many charged documents were you asked to review as part of the classification review process for *United States v. Manning*? (Include only those documents that you reviewed and referenced in your final report; do not include any documents that you may have reviewed for other purposes).

Who specifically worked on the classification review? Please provide a list of names and their respective positions, and the time period that they were asked to work on the classification review.

How did you choose who would work on the classification review?

Did any of the people who you selected to work on the classification review need to get clearances to work on the review?

If so, how long did this take?

If you delegated any part of the classification review to others, what did you tell your delegates about the timing of the classification review and when it needed to be completed?

Do you have any email or written documentation regarding the instructions you gave to your delegates about the timing of the classification reviews? If yes, please provide.

Did your delegates provide you with daily updates on their progress? If so, how did they provide these daily reports? If written, please provide documentation.

Did your delegates provide you with weekly updates on their progress? If so, how did they provide these weekly reports? If written, please provide documentation.

Did your delegates provide you with monthly updates on their progress? If so, how did they provide these monthly reports? If written, please provide documentation.

If you delegated a portion of the review to others, list all the ways that you kept yourself informed on what was being done for the classification review process.

What portion of each of the delegates' job was devoted to this classification review? (e.g. 30%, 50%). Please list for each person involved.

Did you (or your delegates) work on the classification review every day until the time the classification review was submitted to the trial counsel?

Did you (or your delegates) work on weekends? If so, which weekends?

Did you (or your delegates) work on holidays? If so, which holidays?

On average, how many hours per week in total did you (or your delegates) work on the classification review?

Do you have timesheets for who worked on the classification reviews and for how long?

How many total hours did you and/or your delegates take to complete the classification review? Specifically:

You:

Your delegates (specify by person):

Once you had completed your review, how long did it take you or your delegates to prepare the report for submission to trial counsel?

Trial Counsel Inquiries On Status of Classification Review for Charged Documents

Did trial counsel ask for updates on where you were in the process of completing the classification review? (Note: this question does not ask whether trial counsel made further requests, but rather whether they made status inquiries) If so, how and when did they ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did trial counsel ever ask you how much longer the process would take? If so, how and when did they ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did trial counsel ever ask you what specifically was taking so long? If so, how and when did they ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did trial counsel ask how many people were working on the classification review? If so, how and when did they ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did trial counsel ask how much time you were devoting to the classification review process? If so, how and when did they ask? If in written form (e.g. email, letter, memo), please provide documentation.

18 March 2011 Memo

On 18 March 2011, the Government sent you a memorandum asking you to “finalize” your classification review. As of 18 March 2011, how long had you been working on your classification review?

If 18 March 2011 was the date you started your classification review, did you question the trial counsel why they were asking you to “finalize” your review? If so, how? If in writing, please provide documentation.

In the 18 March 2011 memorandum, the trial counsel provides you with a suspense date of 31 March 2011. Did you ever communicate with the trial counsel specifically about the suspense date?

If you did communicate with the trial counsel specifically about the suspense date, what did you say? What did the trial counsel say?

If you did communicate with the trial counsel specifically about the suspense date, how did this communication take place? If in writing, please provide documentation.

If you delegated some or part of the classification review, what did you tell your delegates about the 31 March 2011 suspense date?

Based on dates the trial counsel has provided, you did not meet the suspense date. Is this true?

Did you communicate a reason for not meeting the suspense date to trial counsel?

Did trial counsel ever contact you to ask why you did not meet the suspense date?

In trial counsel's 18 March 2011 memorandum to you, trial counsel writes the following:

"Under Article 10, UCMJ, when an accused is in pretrial confinement, the United States is required to use "reasonable diligence" to continue forward motion on resolving criminal cases. See 10 U.S.C. §810. The only remedy for an Article 10 violation is dismissal of the charges with prejudice. Additionally, the United States must ensure it does not violate the accused's Sixth Amendment right to a speedy trial. See *Barker v. Wingo*, 407 U.S. 414 (1972). All existing and future delays by your department could severely hinder the prosecution."

Did you read this at the time you received it?

What did you understand this to mean?

Did you communicate this specific portion of the memorandum to your delegates?

If so, what did you tell them?

Did you ever communicate with trial counsel specifically about this portion of the memorandum?

If so, what did the communication involve?

If so, how did the communication take place? If the communication was written, please provide documentation.

Subsequent Memorandums From Government

Other than the 18 March 2011 memorandum, did the trial counsel provide you with further memoranda asking you to complete the classification review?

If yes, please list the dates you received the follow-up memoranda.

What was your view of why the trial counsel was sending you these further memoranda?

Was there a suspense date on the further memoranda? Please specify yes/no for each memorandum you received?

What was the suspense date for each memorandum?

Did you communicate the suspense dates to your delegates? If so, how? If in writing, please provide written documentation.

Did you meet the suspense dates? Explain for each subsequent memorandum.

If you did not meet the suspense date, did you communicate with the trial counsel about your failure to meet the suspense dates? What did the communication entail? Please provide documentary evidence if this communication was in writing.

Did these memoranda include reference to "Speedy Trial"?

If yes, did you communicate with the trial counsel specifically about the reference to speedy trial in the memoranda?

Convening Authority

Were you aware that the trial counsel was requesting delays in the proceedings based on the classification review process being incomplete?

Did you ever prepare a memo or any document for the trial counsel to provide to the Convening Authority explaining the progress made on the classification review? If so, please provide this document or memo.

Did you ever receive any communication from the Convening Authority about the classification review?

Completion of Classification Review

What was the date that you completed your classification review?

How many pages was your review?

What was the date you began producing the written report?

What was the date you completed the written report?

What was the date that you provided your completed classification report to trial counsel?

After completing the report, did trial counsel require your consent to disclose the classification review to the Defense?

If so, when did trial counsel request this consent? When was the consent provided?

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.